United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-7368

(42276)

United States Court of Appeals

FOR THE SECOND CIRCUIT

JAMES C. JONES, GLORIA DEBERRY, MARY J. ECCLES, *et al.*,
Plaintiffs-Appellees-Appellants,

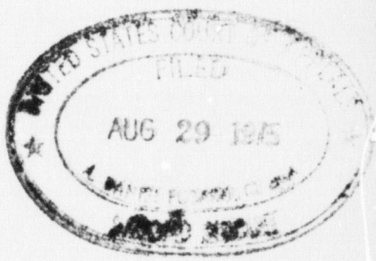
—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,
Defendants-Appellants-Appellees.

DOROTHY WILLIAMS, JOHN GOYCO and JOHNNIE MCCOY, *et al.*,
Plaintiffs-Appellees-Appellants,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,
Defendants-Appellants-Appellees.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX
VOLUME I

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Docket Entries in *James C. Jones, et al.*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action 73 Civ. 3815

(Consolidated with 74 C 91 for all purposes)

DATE	PROCEEDINGS
Sept. 5–73	Filed Complaint and issued summons.
Sept. 5–73	Filed Order to show cause for a temporary restraining order and preliminary injunction. Returnable Sept. 12–73. LASKER, J.
Sept. 5–73	Filed pltfs. first request for production of documents.
Sept. 14–73	Filed order that deft's are temporarily restrained from making any permanent appointments to position of Supervising Human Resources Specialist, until continued hearing on Oct. 29, 1973. Lasker, J. Mailed notice.
Sept. 21–73	Filed affdvt of Charlotte Jefferson, second affdvt of James C. Jones, second affdvt of Mary J. Eccles, & second affdvt of Gloria DeBerry, in support of pltffs application for a TRO and a preliminary injunction.
Sept. 21–73	Filed pltffs supplemental memo in support of application.
Sept. 21–73	Filed pltfs. second request for production of documents.

Docket Entries

DATE	PROCEEDINGS
Oct. 30–73	Filed deft Kathy Schnapper appearing pro se affdvt & notice of motion for leave to intervene as a party deft. Ret. 11-12-73.
Nov. 12–73	Filed affdvt. of Edward O. Howard in opposition to motion to intervene.
Nov. 12–73	Filed memorandum in opposition to motion to intervene.
Nov. 12–73	Filed affdvt of deft. in opposition to motion to intervene by Kathy D. Schnapper, pro se.
Nov. 12–73	Filed affdvt of Kathy D. Schnapper in reply to affdvt of Paula J. Ormansky, & in support of original motion to intervene. Ret. 1-7-74.
Nov. 27–73	Filed affdvt & notice of motion for class suit determination, by defts. Ret. 11-30-73.
Nov. 27–73	Filed memo of law in support of motion by deft.
Dec. 5–73	Filed defts first interrogs. to pltffs.
Jan. 4–74	Filed deposition of Helene R. Willingham, taken by pltff 12-18-73.
Jan. 4–73	Filed deposition of Leonard Y. Rosenberg, taken by pltff 12-21-73.
Jan. 7–74	Non-Jury Trial begun before LASKER, J.
Jan. 9–74	Trial Cont'd.
Jan. 10–74	Trial Cont'd.

Docket Entries

DATE	PROCEEDINGS
Jan. 11–74	Trial Cont'd, and concluded. Dec. Res.
Apr. 29–74	Filed deft's (Corp. Counsel) memo of law.
Apr. 30–74	Filed stip and order that JAVIER ANTOMPIETRI may be made a pltf. in this action. LASKER, J.
May 13–74	Filed pltfs. reply memo.
May 21–74	Filed Defts. reply memo.
Jun. 21–74	Filed Memo Endorsed on unsigned order to show cause of the Social Services Employees Union Local 371 to intervene; Motion to intervene and for a temporary restraining order denied for reasons set forth on the record June 20 and June 21–74. It is So Ordered. LASKER, J. Mailed Notices
June 21–74	Filed notice of appeal by Social Services Employees Union Local 371 and Julia R. Jorge from order entered in this action on June 21 m/m: Corp Counsel for defts.
July 26/74	Filed Transcript (Illegible).
Jan. 10–75	Filed Opinion #41718. Pltffs seek and are entitled to declaratory & injunctive relief. Accordingly, Examination 2011, 1631, 1097, 1099 & 1626 are declared unconstitutional and defts. are enjoined from making appointment from eligible lists based on their

DATE	PROCEEDINGS
	results . . . & defts are directed to file a memorandum on these issues within 10 days of the filing of this Opinion, with pltffs. to submit any reply within 1 week hereafter Pltffs' motion for class action determination in both cases are denied. Pltffs' request for an award of attys' fees is denied . . . Submit Order. Lasker, J. m/n (Filed in 73 Civ 3815 and docketed in 74 Civ 91) (Illegible).
Jan. 22–75	Filed Pltffs' notice of to revise opinion . . . ret. 1-27-75 at 10 AM-Rm 2903.
Jan. 22–75	Filed True Copy of order from USCA dismissing the appeal . . . Fusaro, Clerk, USCA. m/n
Feb. 19–75	Filed Reply Memo. in support of Pltffs' motion to revise opinion.
Feb. 26–75	Filed NYC's Memo. of Law in response to pltffs' request for affirmative relief.
Mar. 13–75	Filed Pltffs' Memo of Law in support of Pltffs' relief sought.
Mar. 20–75	Filed Supplemental Opinion #41718 . . . Pltffs. move, pur. to Rule 54(b), F.R.Civ Pl. for an order revising our Opinion filed 1-10-75, by striking from it the paragraph relating to pltffs' request for counsel fees, . . . and substituting a statement that we

Docket Entries

DATE	PROCEEDINGS
	reserve decision on that issue pending clarification of the applicable law by the Court of Appeals for this Circuit and the Supreme Court. Putting aside the procedural objections to such a course, which are persuasively set forth in defts' Memo in Opposition, the motion is denied . . . It is so Ordered . . . Lasker, J. mn
Apr. 7–75	Filed Opinion #42203 . . . Accordingly, the City shall give 15 days notice of its intention to terminate any pltf. presently serving as a provisional employee in the three titles in issue . . . By our 1-10- Opinion, we denied pltffs' motion for class status. Pltffs. renew their motion and defts do not oppose it. Because those other than the named pltffs. may have occasion to seek relief under the judgment, the motion is granted and our denial of the earlier motion is vacated. The class is defined as all Blacks and Hispanics who failed the five examinations in issue or who passed but scored too low to be appointed. Submit judgment in accordance with this memorandum . . . LASKER, J. mn
Apr. 24–75	Filed defts notice of motion to amend opinion. Ret. 4-25-75.
Apr. 24–75	Filed defts affdvt in support of motion to amend opinion.

Docket Entries

DATE	PROCEEDINGS
May 9–75	Filed Memo—End on back of motion filed 4-24-75 . . . We adhere to our conclusions that class status is appropriate in these cases . . . However the class is newly defined as all Blacks and Hispanics who filed any of the five examinations in issue . . . On the City's assurance that HRA's procedures already provide and will continue to provide 14 days notice to all employees whom the City plans to terminate, we vacate our earlier determination that the final judg. provide for 15 days notice of terminations. Defts. may submit a proposed judg. within 10 days, together with their comments, if any, on the pltffs' proposed judg. . . . The motion is granted to the extent indicated in this memorandum. It is so Ordered . . . Lasker, J. mn
May 30–75	Filed Final Order & Judgment . . . Ordered that Case No 73 C 3815 and 74 Civ 91 are hereby consolidated for all purposes . . . these action are certified class action under 23 of FRCP, with the class limited to those Blacks and Hispanics who failed any one of the examinations heretofore adj. to be invalid and unconstitutional . . . Examination Nos. 2013, 1631, 1099, 1626 and 1097 are declared invalid . . . Defts NYC Human Resources Adm., NYC Dept of Personnel, and NYC Civil Serv. Comm., and the named defts. Sugarman, Bronstein, Smith

Docket Entries

DATE	PROCEEDINGS
	& Stadtmauer, and their agents. etc. are permanently enjoined from making permanent or provisional appointments to the positions of Supervising Human Resources Specialist, Senior Human Resources Specialist and/or Human Resources Specialist in the NYC Human Resources Adm. based upon the results of Examination Nos. 2013, 1631, 1097, 1626 and/or 1099 or any eligible list promulgated pur. to any of the said examinations . . . The defts shall submit to the Court within 30 days a detailed plan for the development of the selection procedures described in Para. #5 hereof . . . Pltff's request for the award of counsel fees to pltffs atty is denied . . . Lasker, J. mn Judgment Entered 5-30-75 . . . R.F. Burghardt . . . ent. 6-3-75.
Jun. 11–75	Filed Defts' Notice of Appeal to USCA from order & Judgment ent. 5-23-75 . . . Copies mailed on 6-12-75 To: Covington, Howard, Hagood & Holland —— and —— Greenberg, Greenberg & Mintz.
Sep. 21–73	Filed Letter of Wm. Robinson to Clerk of Court.
Jun. 24–75	Filed Transcript of proceedings dated 1-7-74.
Jun. 24–75	Filed Transcript of proceedings dated 1-9-74.
Jun. 24–75	Filed Transcript of proceedings dated 1-10-74.
Jun. 24–75	Filed Transcript of proceedings dated 1-11-74.
Jun. 20–75	Filed pltffs Notice of Appeal to the USCA.

Docket Entries

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action 74 C 91

(Consolidated with 73 Civ 3815 for all purposes)

DATE	PROCEEDINGS
Jan. 4–74	Filed complaint & issued summons.
Jan. 4–74	Filed Order to Show Cause. Ordered that the defts. are hereby temporarily restrained from hereafter terminating the provisional appointment of the pltfs. and other Blacks or Hispanics who are provisional Senior Human Resources Specialists or Human Resources Specialists in contemplation of or for purposes of replacement by permanent appointees. LASKER, J.
Jan. 9–74	Filed ORDER: The defts are temporarily restrained and preliminarily enjoined from taking any further steps to effectuate any permanent appointments to the positions of Senior Human Resources Specialist or Human Resources Specialist pending adjudication of the merits by the Court. * * * This matter set for continued hearing at the call of the Court, * * *. LASKER, J. (n/m)

Docket Entries

DATE	PROCEEDINGS
Mar. 29/74	Filed pltfs. additional Stip of facts.
Apr. 30–74	Filed deft's stipulated facts.
May 13–74	Filed pltfs. reply memo.
Jan. 10–75	Filed Opinion #41718 . . . Pltffs. seek anre entitled to declaratory & Injunctive relief. Accordingly, Examination 2011, 1631, 1097, 1099, & 1626 are declared unconstitutional and defts. are enjoined from making appointment from eligible lists based on their results . . . & defts are directed to file a memorandum on these issues within 10 days of the filing of this Opinion, with pltffs. to submit their reply if any within 1 week hereafter . . . Pltffs' motion for a class action determination in both cases are denied . . . Pltfs' request for an award of atty's fees is denied . . . Submit Order . . . Lasker, J. m/n (Docketed in 74 Civ 91 and Filed in 73 Civ 3815).
Jan. 22–75	Filed Pltffs' Notice of motion to revise opinion . . . ret. 1-27-75 at 10 AM Rm 2903. (filed in 73 Civ 3815)
Feb. 19–75	Filed Reply Memo. in support of Pltffs' motion to revise opinion. (fld. in 73-3815)
Feb. 26–75	Filed NYC's Memo of Law in response to pltffs' requests for affirmative relief.
Mar. 13–75	Filed Pltffs' Memo of Law in support of their relief being sought . . . (fld in 73-3015)

Docket Entries

DATE	PROCEEDINGS
Mar. 20–75	Filed Suppl. Opinion #41718 . . . Pltffs. move, pur. to Rule 54(b), FRCP for an order revising our Opinion filed 1-10-75, by striking from it the paragraph relating to pltff's request for counsel fees, . . . and substituting a statement that we reserve decision on that issue pending clarification of the applicable law by the Court of Appeals for this Circuit and the Supreme Court. Putting aside the procedural objections to such a course, which are persuasively set forth in defts' Memo. in Opposition, the motion is denied. . . . It is so Ordered . . . Lasker, J. mn (filed in 73 Civ 73 Civ 3815)
Apr. 7–75	Filed Opinion #42203 . . . Accordingly, the City shall give 15 days notice of its intention to terminate any pltff. presently serving as a provisional employee in the three titles in issue . . . By our 1-10 Opinion, we denied pltffs' motion for class status. Pltffs. renew their motion and defts. do not oppose it. Because those other than the named pltff. may have occasion to seek relief under the judgment, the motion is granted and our denial of the earlier motion is vacated. The class is defined as all Blacks and Hispanics who failed the five examinations in issue or who passed but scored too low to be appointed. Submit judgment in accordance with this memorandum. . . . Lasker, J. mn (filed in 73 Civ 3815)

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Apr 9–75	Filed Memo—End on back of motion fld 4-24-75 . . . However the class is newly defined as all Black and Hispanics who fld any of the 5 examination in issue . . . On the City's assurance that HRA's procedures already provide and will continue to provide 14 days notice to all employees whom the City plans to terminate, we vacate our earlier determination that the final judg. provide for 15 days, notice of terminations. Defts. may submit a proposed judgment within 10 days, together with their comments, if any, on the pltffs' proposed judg . . . The motion is granted to the extent indicated in this memorandum. . . . It is so ordered. . . . Lasker, MN (fld in 73-3815)
May 30-75	Filed Final Order & Judgment . . . Ordered that Case No 73 C 3815 and 74 Civ 91 are hereby consolidated for all purposes . . . these action are certified class action under 23 of FRCP, with the class limited to those Blacks and Hispanics who failed any one of the examinations heretofore adj. to be invalid and unconstitutional . . . Examination Nos. 2013, 1631, 1099, 1626 and 1097 are declared invalid . . . Defts NYC Human Resources Adm., NYC Dept of Personnel, and NYC Civil Serv. Comm., and the named defts. Sugarman, Bronstein, Smith & Stadtmauer, and their agents, etc. are perma-

DATE	PROCEEDINGS
	nently enjoined from making permanent or provisional appointments to the positions of Supervising Human Resources Specialist, Senior Human Resources Specialist and/or Human Resources Specialist in the NYC Human Resources Adm. based upon the results of Examination Nos. 2013, 1631, 1097, 1626 and/or 1099 or any eligible list promulgated pur. to any of the said examinations. . . . The defts shall submit to the court within 30 days a detailed plan for the development of the selection procedure described in Para. #5 hereof. . . . Pltff's reques[t] for the award of counsel fees to pltffs' atty is denied. . . . Lasker, J. mn Judgment Entered 5-30-75 . . . R. F. Burghardt. . . . ent. 6-3-75. (filed in 73 Civ 3815)
June 11-75	Filed Defts' Notice of Appeal to USCA from the judgment entered on 5-23-75. . . . Copies Mailed on 6-12-75 to: Covington, Howard, Hagood & Holland & Greenberg, Greenberg & Mintz.
June 20-75	Filed Plaintiffs Notice of Appeal to USCA

Complaint in *James C. Jones, et al.*

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 3815

Filed Sept 5, 1973

JAMES C. JONES, GLORIA DE BERRY, MARY J. ECCLES, CHARLOTTE JEFFERSON, ANDREW P. JACKSON, each individually and on behalf of all others similarly situated,

Plaintiffs,

—v.—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; JULE M. SUGARMAN, individually and in his capacity as Administrator of the New York City Human Resources Administration; THE NEW YORK CITY DEPARTMENT OF PERSONNEL; THE NEW YORK CITY CIVIL SERVICE COMMISSION; HARRY I. BRONSTEIN, individually and in his capacities as Director of the New York City Department of Personnel and Chairman of the New York City Civil Service Commission; and JAMES W. SMITH and DAVID STADTMAUER, each individually and in his capacity as Civil Service Commissioner,

Defendants.

I. JURISDICTION

1. This proceeding is brought under (1) 42 U.S.C. § 1981, providing for the equal rights of all persons within the jurisdiction of the United States; (2) 42 U.S.C. § 1983,

providing for the right of civil action to redress deprivation under color of any state statute, ordinance, regulation, custom or usage of rights, privileges or immunities secured by the Constitution and laws, and (3) the Fifth and Fourteenth Amendments to the United States Constitution, protecting all persons against denial of due process of law by the States and their agencies and securing to all persons the equal protection of the laws. In this action, plaintiffs seek to redress and enjoin violations of those provisions of the Constitution and laws of the United States. Plaintiffs also seek a declaratory judgment pursuant to 28 U.S.C. § 2201. This Court has jurisdiction under 28 U.S.C. §§1343(3) and (4).

II. Class Action Allegations

2. (a) Plaintiffs bring this action as a class action maintainable under Rule 23(b)(1) and (2), Federal Rules of Civil Procedure;

(b) The class includes all persons similarly situated to the named plaintiffs, to wit:

> (i) all Black or Hispanic persons presently employed by the New York City Human Resources Administration who took an examination entitled "Promotion to Supervising Human Resources Specialist Examination No. 1631" [hereinafter "Exam No. 1631"] given by the City of New York Department of Personnel, for permanent appointment to the position of Supervising Human Resources Specialist, but by virtue of their failing to attain a score of 70 or above on that examination are not eligible for, or will not

be appointed to, the Supervising Human Resources Specialist position; and

(ii) all Black or Hispanic persons who took an examination entitled "Open Competitive Examination for Supervising Human Resources Specialists No. 2013 [hereinafter "Exam No. 2013"] given by the City of New York Department of Personnel, for permanent appointment to the position of Supervising Human Resources Specialist, but by virtue of their failing to attain a score of 70 or above on that examination are not eligible for, or will not be appointed to the Supervising Human Resources Specialist position;

(iii) all Black and Hispanic persons who took both Exam No. 1631 and Exam No. 2013 and by virtue of their failing to attain a score of 70 or above on the examinations are not eligible for, or will not be appointed to the Supervising Human Resources Specialist position;

(iv) all Black or Hispanic persons who took Exam No. 2013 and attained a score of 70 or above, but who did not attain a sufficiently high score to be listed among the top eligibles, and who, therefore, will not be appointed to permanent Supervising Human Resources Specialist status on September 14, 1973.

(c) The class as defined above includes approximately 96 persons in category (i) above and additional persons whose number is presently unknown in categories (ii), (iii), and (iv); thereby making the class so numerous that joinder of all members is impracticable.

(d) The named plaintiffs are fully representative members of the class and will fairly and adequately protect members' interests. They are, as more fully set forth [illegible], Blacks who have taken the examinations here challenged and failed to pass them, and who are now in imminent danger of losing present positions as provisional Supervising Resources Specialists as a result of appointments based on the examinations.

(e) The questions of fact common to the class include:

(i) Whether the civil service examinations on which permanent promotion or appointment to Supervising Human Resources Specialist depends (Exams 1631 and 2013) have the effect of disproportionately screening out Black and Hispanic applicants?

(ii) Whether examinations nos. 1631 and 2013 are significantly job related?

(iii) Whether the procedure under which defendants administer and grade the civil service examinations, and establish eligibility lists based on them, is arbitrary, secretive, and subject to racially and ethnically discriminatory manipulation, falsification, or abuse?

(f) The questions of law common to the class include:

(i) Whether defendants' examinations nos. 1631 and 2013 are unlawful, in that they disproportionately screen out Black and Hispanic persons, and are not and could not be shown to be valid or job related?

(ii) Whether appointments from the eligibility lists promulgated pursuant to examinations nos. 1631 and

2013 would or will violate the rights of Black and Hispanic persons protected by the Constitution and laws?

(iii) Whether the arbitrary, secretive, and easily manipulatable system of developing and scoring examinations and listing eligibles violates, or tends to violate, the due process and equal protection rights of Black and Hispanic applicants for Supervising Resources Specialist positions?

(iv) The nature of appropriate injunctive and affirmative relief from defendants' unlawful practices and their effects.

THE PLAINTIFFS

3. Plaintiff James C. Jones is a black person residing in the State of New York. He was first employed by the Human Resources Administration (HRA) as a provisional Human Resources Specialist in 1968. He was certified as a permanent Senior Human Resources Specialist in April 1970 and appointed as a provisional Supervising Human Resources Specialist in April 1971. He remains in that position at the present time. His performance in all positions held with HRA has at all times been satisfactory. On October 14, 1972, plaintiff Jones took examination no. 1631 and on August 10, 1973 he was notified that he had failed, scoring 65. The passing score is 70.

Plaintiff Jones' present postion as provisional Supervising Human Resources Specialist is imminently jeopardized by the results of examination no. 1631. The eligible list, promulgated on or about August 17, 1973 and based on

results of the examinations, defines who will receive permanent positions. When appointments are made from the list, plaintiff Jones provisional job will be eliminated, and he will be forced to return to a Senior Human Resources Specialist position of significa tly less responsibility and pay.

4. Plaintiff Gloria DeBerry is a black person residing in the State of New York. She was first employed by HRA in 1967 as a provisional Human Resources Specialist working as a vocation teacher in the Manpower Career Development Agency. She was certified as a permanent Senior Human Resources Specialist in September 1971; and in September 1972, she was appointed as a provisional Supervising Human Resources Specialist. Plaintiff DeBerry remains in that position at present. Her performance in all positions held with HRA has at all times been satisfactory. On October 14, 1972, she took Exams Nos. 1631 and 2013. In August 1973, she was notified that she failed both exams, scoring 66 and 63 respectively.

Plaintiff DeBerry's position as a provisional Supervising Human Resources Specialist is imminently in jeopardy by the results of exams 1631 and 2013. When appointments are made from the eligible list, her provisional job will be eliminated and she will be demoted to a position of significantly less pay and responsibility.

5. Plaintiff Mary J. Eccles is a black resident of the State of New Jersey. She was first employed by HRA in October 1968 as a provisional Senior Human Resources Specialist working as Assistant Director for Parent Involvement for Project Headstart in the Community Development Agency. She was certified as a permanent Senior

Human Resources Specialist in April 1970; and in February 1972 was appointed Supervising Human Resources Specialist (HRS). She remains in that position at present; and her performance in all positions held at HRA has, at all times, been satisfactory. On October 14, 1972, she took Exams 1631 and 2013. In August 1973, she was notified of receiving a failing score on 1631, scoring 65. She was not informed of her failure on 2013 nor was she invited to an oral examination on 2013 as is done with those who are successful on the written portion of the test.

Plaintiff Eccles' position as a provisional Supervision HRS is imminently in jeopardy as a result of her performance on the examinations. When appointments are made from the eligible list, her provisional job will be eliminated and she will be demoted to a position of significantly less responsibility and pay except to the extent she might be allowed to hold the position of someone on leave of absence.

6. Plaintiff Charlotte Jefferson is a black resident of New York State. She was first employed by HRA in January 1970 as a provisional Senior HRS and certified as a permanent Senior HRS in April 1970. She was appointed a provisional Supervising HRS in January 1971 and continues in that position to date. Her performance in all positions held at HRA has, at all times, been satisfactory. She took Exam 1631 and in August 1973, she was informed that she had failed, scoring 62.5.

Plaintiff Jefferson's position as a provisional Supervising HRS is imminently jeopardized as a result of her performance on the exam. When appointments are made from the eligible list, her provisional position will be eliminated

and she will be demoted to a position of significantly less responsibility and pay except to the extent she might be allowed to hold the position of someone on leave of absence.

7. Plaintiff Andrew P. Jackson is a black resident of the State of New York. He was first employed by HRA in October 1968 as a provisional Senior Human Resources Technician as Assistant Coordinator for Personnel Services for HRA. He was permanently certified as an HRS in April 1970. In December 1970, he was appointed a provisional Supervising HRS. He continues to hold this position; and his performance in all jobs at HRA has, at all times, been satisfactory. On October 14, 1972, he took Exam 2013; and in August 1973 was notified that he had failed the exam, scoring 48.8.

Plaintiff Jackson's position as a provisional Supervising HRS is imminently in jeopardy as a result of his performance on the exam. When appointments are made from the eligibility list, his provisional position will be eliminated and he will be demoted to a position of significantly less responsibility and pay except to the extent he might be allowed to hold the position of someone on leave of absence.

DEFENDANTS

8. Defendant the New York City Human Resources Administration is a super agency with the responsibility for planning, initiating, supervising, coordinating, reviewing and evaluating City programs and activities in the "Attack on Poverty" including the areas of community action and development, manpower and career development, social and youth services, public assistance and addiction services. It has offices at 250 Church Street, New York, N.Y. 10013 and

was established by Executive Order No. 28 on August 15, 1966.

9. Defendant Jule M. Sugarman is a resident of the City and State of New York. He is administrator of HRA and has chief responsibility for the conduct of its affairs.

10. The defendant New York City Department of Personnel is, *inter alia,* responsible for recruiting personnel to staff city agencies; making studies and recommendations to the City Civil Service Commission for the grading and classifying of positions in the civil service; scheduling and conducting examinations; establishing, promulgating and certifying eligible lists, and investigating applicants for positions in the civil service. The Department of Personnel has offices at 220 Church Street, New York, N.Y. 10013.

11. Defendant the New York City Civil Service Commission functions, *inter alia,* as a quasi-legislative body in the enactment of rules and regulations governing the civil service system; classifies all civil service positions, and orders examinations and acts as "guardian of the city's merit system."

12. Defendant Harry I. Bronstein is a resident of the City and State of New York. He is City Personnel Director and Chairman of the City Civil Service Commission and has principal responsibility for the conduct of their affairs.

13. James W. Smith and David Stadtmauer are each members of the Civil Service Commission and share responsibility for the conduct of its affairs.

14. In order to qualify for the position of Supervising Human Resources Specialist in HRA, an applicant must, *at a minimum,* either qualify to take Exam No. 1631 and pass such examination; or qualify to take Exam No. 2013 and pass such examination; 70 is the passing score for both exams.

15. Both Exams Nos. 1631 and 2013 operated to screen out a disproportionate percentage of Black and Hispanic applicants. The percentage of whites who passed each exam was approximately four times as great as the percentage of Black or Hispanic applicants who passed each exam.

16. Exams Nos. 1631 and 2013 have had direct impact on the racial and ethnic makeup of the imminent permanent appointments to the position of Supervising HRS. On September 14, 1973, defendants intend to appoint four times as many whites to the position of Supervising HRS as Blacks and Hispanics, pursuant to an eligibility list based on Exams Nos. 1631 and 2013 certified on August 17, 1973.

17. Such appointments will have the effect of perpetuating the current disproportion of whites to Blacks and Hispanics in the permanent Supervising HRS position and will reverse the trend toward equality of opportunity in that position which has been fostered by the provisional appointment of qualified Black and Hispanic persons to that position.

18. Neither Exam No. 1631 nor Exam No. 2013 bears a demonstrable relationship to successful performance of the job of Supervising HRS.

19. Upon making permanent appointments to the position of Supervisory HRS, all provisional appointments will be terminated. The net effect of the permanent appointments and termination of the provisional appointments will be to displace Blacks and Hispanics who have been satisfactorily performing the job of Supervising HRS with whites who have passed Exam Nos. 1631 or 2013.

20. The procedures by which Exam Nos. 1631 and 2013 were compiled, advertised, administered, graded and their scores and pursuant ranking of eligibles complied and published are arbitrary, secretive and easily racially and ethnically manipulated.

IRREPARABLE INJURY

21. The appointment of 241 or any substantial number of Supervising Human Resources Specialists from the eligible list promulgated on or about August 17, 1973 would result in the displacement of the named plaintiffs and other Black provisional Supervising Human Resources Specialists from their current positions. These class members would therefore be immediately relegated to positions inferior in responsibility, desirability and pay to their present positions.

22. In the past, defendants have administered examinations and made appointments to the Supervising Human Resources position approximately once every three years. Based on this pattern, on information and belief, class members excluded from the position of Supervising HRS pursuant to the existing eligible list will not have another opportunity to seek appointment for a like period of years.

VIOLATIONS OF LAW

23. The acts, practices, and policies described above, relating to the formulation, administration, and usage of civil service examination numbers 1631 and 2013 and to appointments made or to be made pursuant to those examinations, violate the federal rights of plaintiffs and members of the class they represent. Said rights are secured to plaintiffs and members of the class by 42 U.S.C. §§ 1981, 1983 and by the due process and equal protection provisions of the Fifth and Fourteenth Amendments to the United States Constitution.

NEED FOR RELIEF

24. Plaintiffs and the class they represent have no adequate remedy at law. They have suffered and are continuing to suffer irreparable injury as a result of defendants' reliance upon examinations which discriminate on the basis of race and ethnic background. These discriminatory acts, practices and policies will continue to injure plaintiffs and class members in the manner described hereinabove, unless and until this Court grants the preliminary and permanent relief requested by plaintiffs. Indeed, appointments to Supervising HRS positions based on the discriminatorily formulated eligible list will be made immediately unless the Court enjoins the defendants from this action.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

A. Enter a declaratory judgment declaring that the acts, practices, and policies of defendants in formulating and administering examination numbers 2013 and 1631 for the position of Supervising HRS, in establishing an eligible list based on the results of said examination, and in making appointments based on said eligible list have deprived and continue to deprive the plaintiffs and members of the class they represent of federal rights secured to them by 42 U.S.C. §§ 1981, 1983 and the Fifth and Fourteenth Amendments to the United States Constitution.

B. Enter a preliminary and permanent injunction enjoining the defendants, their officers, agents, employees, and successors in office from acting upon the results of any civil service examination for the position of Supervising HRS which has not first been properly demonstrated to be valid and significantly related to the Correction Sergeant's position.

C. Enter a preliminary and permanent injunction enjoining the above-named defendants, their officers, agents, employees, and successors in office from making any permanent appointments to the position of Supervising HRS based on the results of examinations numbers 2013 and 1631 or any eligible list based on performance on those examinations unless and until the defendants have first properly demonstrated that said examinations were valid and significantly related to performance of the job.

D. Enter a preliminary and permanent injunction enjoining the above-named defendants, their officers, agents, employees and successors in office from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and certain members of the class they

represent, by reason of the permanent appointment of other persons to the position of Supervising HRS based on the results of examination numbers 2013 and 1631, unless and until the defendants have first properly demonstrated that said examination was valid and significantly related to the job.

E. Enter a preliminary and permanent injunction enjoining defendants, their officers, agents, employees and successors in office from unlawfully discriminating, in any manner whatever, against Black and Hispanic persons and members of the class represented by plaintiffs, with respect to appointments to the position of Supervising HRS.

F. Retain jurisdiction and require appropriate reporting as to the defendants' compliance with the relief prayed for herein during a period of time sufficient to assure the elimination of all the discriminatory practices complained of and their ongoing effects.

G. Grant plaintiffs and the class they represent such other and further equitable relief as may be appropriate, including costs and reasonable attorney's fees.

Respectfully submitted,

JACK GREENBERG
WILLIAM L. ROBINSON
DEBORAH M. GREENBERG
10 Columbus Circle
Suite 2030
New York, New York 10019
Tel. (212) 586-8397
Attorneys for Plaintiffs

Order to Show Cause

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

ORDER TO SHOW CAUSE FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

Upon reading and filing the summons and complaint dated September , 1973 and the annexed affidavits of Deborah M. Greenberg; James C. Jones; Gloria DeBerry; and Mary J. Eccles, it is

ORDERED, that the defendants or their attorneys show cause in Room 102 of the United States Courthouse, Foley Square, New York, New York on September 12, 1973 at 2:15 AM/PM why an order should not issue pursuant to Rule 65 of the Federal Rules of Civil Procedure (1) restraining and enjoining the defendants, their officers, employees, agents and successors, during the pendency of this action, from making any permanent appointments to the position of Supervising Human Resources Specialist and (2) restraining and enjoining the defendants, their officers, employees, agents and successors, during the pendency of this action, from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and those members of the class who are provisional Supervising Human Resources Specialists.

Order to Show Cause

ORDERED, that pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, the defendants Bronstein and the New York City Civil Service Commission comply with plaintiffs' Request for Production of Documents filed this date, by producing the documents requested therein on or before September 7, 1973; and it is further

ORDERED, that service of copies of this Order and supporting papers therein on the defendants shall be sufficient if made personally upon the Corporation Counsel of the City of New York by the attorneys for the plaintiffs on or before the ..... day of September, 1973 at 1 PM.

M. F. L.
United States District Judge

Dated: New York, New York
September 5, 1973.

Affidavit of Deborah M. Greenberg

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

AFFIDAVIT OF DEBORAH M. GREENBERG IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK)
COUNTY OF NEW YORK) *ss.*:

Deborah M. Greenberg, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in the State of New York and this Court and an attorney for plaintiffs herein. I make this affidavit in support of plaintiffs' application for the issuance of a temporary restraining order and a preliminary injunction enjoining and restraining defendants from making appointments to the position of Supervising Human Resources Specialist and from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and those members of the class who are provisional Supervising Human Resources Specialists.

2. The New York City Human Resources Administration is about to, on or about September 14, 1973, appoint 241

persons to the position of Supervising Human Resources Specialist in the Human Resources Administration. These appointments are to be made from an eligibility list certified to the Human Resources Administration by the New York City Department of Personnel on or about August 17, 1973, on the basis of a promotional examination, No. 1631, and an open competitive examination, No. 2013, both held on October 14, 1972.

3. Each of the named plaintiffs is Black.

4. Each of the named plaintiffs was provisionally appointed to the position of Supervising Human Resources Specialist. Upon information and belief, each was so appointed on or about the following dates:

James C. Jones	April, 1971
Gloria De Berry	September, 1972
Mary J. Eccles	February, 1972
Charlotte J[illegible]erson	January, 1971
Andrew P. Jackson	December, 1970

5. All provisional appointments to the position of Supervising Human Resources Specialist will be terminated when the permanent appointments are made. Permanent appointments will be made from the list of those who passed the promotional examination, No. 1631, plus the first 200 persons on the list of those who passed the open competitive examination, No. 2013.

6. Thus, on or about September 14, 1973, persons currently holding provisional Supervising Human Resources Specialist positions who do not qualify for permanent appointment, including the named plaintiffs and approximately 70 other Blacks and Hispanics, will either be demoted to a lower-paying title or terminated.[1]

7. Each of the named plaintiffs has performed satisfactorily or excellently as provisional Supervising Human Resources Specialists. There is no indication that any member of the class has performed his duties other than in a satisfactory manner.

8. Promotional examination No. 1631 had a grossly disparate impact on Blacks and Hispanics as compared to whites. 141 persons took the examination, of whom 46 received a passing score of 70. Of the 66 whites who took the examination, 29, or 44%, passed; of the 87 Blacks who took the examination, 9, or 10.3% passed; and of the 21 Hispanics who took the examination, 3, or 14.3% passed. Of

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[1] Human Resources Administration officials have given informal assurances that approximately one out of five provisional appointees who did not qualify for permanent appointment will be temporarily kept on as Supervising Human Resources Specialists in vacancies created by persons on leave of absence to higher titles. Plaintiffs Eccles, Jefferson and Jackson have personally received such assurances. This arrangement, while preferable to demotion or termination for the select few, is highly uncertain and unofficial, and does not detract from the fact that these 20%, like the others, have lost the opportunity to qualify as permanent Supervising Human Resources Specialists, and thus to promote up to the next level—Principal Human Resources Specialist.

the 41 persons who passed the examination, 70.7% are white, 22% are Black and 7.1% are Hispanic.

9. Open competitive examination No. 2013 had a similarly grossly disparate impact on Blacks and Hispanics as compared to whites. Of those 276 persons employed by the Human Resources Administration who passed the test, 217, or 79%, were white; while 57, or 21%, were Black or Hispanic.[2]

10. Plaintiffs cannot presently calculate the total percentage of whites who passed No. 2013 compared to the total percentage of Blacks and Hispanics who passed that test. Upon information and belief, data necessary to make these calculations are in the exclusive possession and control of the defendants. Plaintiffs presently seek this data as part of the accompanying Request for Production of Documents. However, since open competitive examination No. 2013 is virtually identical to promotional examination No. 1631 (with the exception of a small number of additional questions in No. 2013) and since there is no reason to assume that the racial composition of the applicant population for the tests was dissimilar, there is substantial reason to believe that, once complete calculations can be made, the same discriminatory impact demonstrated for promotional examination No. 1631 will be demonstrated for the open competitive examination No. 2013. The incomplete calculations contained in paragraph 9 above strongly suggest such discriminatory impact.

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[2] If one removes from this calculation the nine whites and one Black who, on information and belief, took and passed both examinations in question, then out of 266 persons who passed *only* No. 2013, 208, or 78%, were white and 56, or 21%, were Black or Hispanic. Thus, the disparate percentages remain the same.

11. Upon information and belief, of the five persons currently holding permanent appointments to the position of Supervising Human Resources Specialist, none is Black and one is Hispanic. Of the 188 persons currently holding provisional appointments to the position of Supervising Human Resources Specialist, 119, or 63%, are Black or Hispanic.

12. Upon information and belief, of the 241 persons about to be appointed to permanent Supervising Human Resources Specialist positions, 45, or 19%, are Black or Hispanic; 196, or 81%, are white. Thus, the total permanent Supervising Human Resources Specialist work force will consist of 46, or 19%, Blacks or Hispanics, and 201, or 81%, whites.

13. Permanent appointments pursuant to examinations Nos. 1631 and 2013 will have the effect of decreasing the number of Black or Hispanic persons in the Supervising Human Resources Specialist position from approximately 120 to 46 and increasing the number of whites in that line from approximately 74 to 201. Such appointments will perpetuate the current racial disparity with respect to permanent appointments, and thoroughly negate the progress towards equality made through the use of provisional appointment of qualified Blacks and Hispanics (see paragraph 11 above).

14. On information and belief, the challenged examinations are similar in nature to other written civil service examinations which have been closely scrutinized by this and other federal courts and have been held by those courts to violate rights protected by 42 U.S.C. §§ 1981 and 1983

and the due process and equal protection clauses of the Constitution. See, *e.g., Bridgeport Guardians, Inc.* v. *Bridgeport Civil Service Comm.*, —— F.2d ——, 6 EPD ¶ 8755 (2d Cir. 1973); *Chance* v. *Board of Examiners,* 458 F.2d 1167 (2d Cir. 1972), *aff'g,* 330 F.Supp. 203 (S.D.N.Y. 1971); *Vulcan Society* v. *Civil Service Commission,* —— F. Supp. ——, Docket No. 73 Civ. 201 (S.D.N.Y. June 12, 1973) and other cases cited in the accompanying memorandum. Indeed, the challenged examination was prepared by the same agency, defendant New York City Department of Personnel, that prepared the fireman examination held to be unconstitutional in *Vulcan Society.* Judge Weinfeld characterized as "unprofessional" the manner in which that examination was prepared and found that the evidence strongly indicated that the exam was not sufficiently related to the job of fireman to justify its use. Slip Opinion at 34. Presently the examination here challenged was prepared in like manner. On* information and belief, the challenged examinations have been professionally validated as job-related, nor have defendants made any effort to do so.

15. As more fully appears from the affidavit of plaintiff Eccles, some of the answers contained in the key to examinations Nos. 1631 and 2013 were contrary to the rules and standard practices of the Human Resources Administration.

16. Plaintiffs and their class will suffer irreparable harm if the requested temporary restraining order and preliminary injunction are not issued.[3] If defendants are permitted

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* Not in original.

[3] Each member of the class would become the victim of racial discrimination with its resultant loss of dignity and self-esteem.

to make 241 appointments from the eligibility list prepared on the basis of examinations Nos. 1631 and 2013, the present gross racial and ethnic imbalance in the position of permanent Supervising Human Resources Specialist will be perpetuated, and the progress towards equality made through provisional appointments of qualified Blacks and Hispanics irreparably negated.

17. The appointment of 241 Supervising Human Resources Specialists from the eligibility list based on examinations Nos. 1631 and 2013 would restrict the ability of the Court to remedy the underrepresentation of minorities should the Court find that such relief is appropriate, and plaintiffs would have to face the reality of no appointments because of no available vacancies. I submit that the Court should preserve its ability to grant relief with respect to the eligibility list in its entirety, since the invalidity of the entire list—not just part of it—will be established if plaintiffs prove at trial that examinations Nos. 1631 and 2013 were unlawfully discriminatory.

18. Further, if defendants are permitted to make appointments from the existing eligibility list, the named plaintiffs would be removed from the position of provisional Supervising Human Resources Specialist and suffer a substantial reduction in pay.

19. With respect to the requirement that plaintiffs show a reasonable probability of success in the final outcome of this litigation, the facts sworn to in this and accompanying affidavits demonstrate beyond cavil that they shall succeed. The accompanying memorandum of law demonstrates that the overwhelming weight of authority is on plaintiffs' side.

20. Plaintiffs respectfully request that this Court waive the requirement that they post security. Plaintiffs are persons of modest means and do not have sufficient assets to be able to purchase a bond of any significant amount.

21. This motion is brought on by Order to Show Cause rather than by Notice of Motion because defendants have not yet appeared and because of the need for prompt injunctive relief to prevent irreparable harm to plaintiffs.

22. On September 5, 1973, at 10:00 A.M., I telephoned the office of the Corporation Counsel of the City of New York and informed Leonard Bernikow, Assistant Corporation Counsel in Charge of Division of General Litigation, that I was about to make an application for a Temporary Restraining Order. He said that a representative of the Corporation Counsel's Office would meet me at 11:00 A.M. at the office of the Clerk of this Court.

23. No prior application has been made for the relief sought in this application.

DEBORAH M. GREENBERG

Sworn to before me
this 5th day of September, 1973

GLORIA A. JONES
Notary Public, State of New York
No. 24-7113060
Qual. in Kings County
Commission Expires March 20, 1974

Affidavit of James C. Jones

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

AFFIDAVIT OF JAMES C. JONES IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

JAMES C. JONES, being duly sworn, deposes and says:

1. I am Black.

2. I am presently employed by the New York City Human Resources Administration in the position of provisional Supervising Human Resources Specialist. I was appointed to that position in April, 1971 and had previously been certified as a permanent Senior Human Resources Specialist in April, 1970.

3. While holding the provisional Supervising Human Resources Specialist title, I have worked as the Chief of Personnel Processing (1969–December, 1971) and an Assistant Director of Personnel (December, 1971–April, 1973) in the Personnel Office of the Human Resources Ad-

ministration, as well as Assistant to the Deputy Director of Labor Relations, my current position.

4. While performing my various duties in the Human Resources Administration, I have attended night school and attained a B.A. degree in Economics from the City College of New York in 1970 and completed 64 credits towards a law degree at St. John's University School of Law.

5. The selection of personnel to serve as provisional Supervising Human Resources Specialists is made by the Human Resources Administrator on the basis of recommendations of immediate supervisors, representing their judgment that the persons selected are the most competent to perform the job.

6. Since I began in 1968, my work at the Human Resources Administration has always been rated as Satisfactory in periodic written evaluations and in oral comments by my supervisors. I have received several letters of commendation from superiors for projects I've initiated. Since my appointment as provisional Supervising Human Resources Specialist, my supervisors have continued to express satisfaction with my work.

7. I took promotional examination No. 1631 on October 14, 1972.

On the basis of my experience as a provisional Supervising Human Resources Specialist, I found that many of the questions on examination No. 1631 were unrelated to the work performed by, or the knowledge required to perform the work of, a Supervising Human Resources Specialist.

Affidavit of James C. Jones

8. Several weeks after the examination, in comparing my answers with the published proposed answer key, I concluded that I had received the minimum passing score of 70. I received notification on or about August 10, 1973 that I had received a score of 65, and had failed.

9. Failure of the examination precludes one from being placed on the eligibility list and being permanently appointed to the position of Supervising Human Resources Specialist regardless of length of service or quality of job performance in that position on a provisional basis.

10. As a result of the promulgation of the eligibility list and my having received a failing score, persons on the list will be given permanent appointments to the position of Supervising Human Resources Specialist and I will lose my provisional appointment and will revert to the position of Senior Human Resources Specialist, at a substantial loss of salary, responsibility and status.

11. I have applied for temporary placement on a Supervising Human Resources Specialist line now vacated due to leave of absence. I have not received a favorable response to my application. Upon information and belief, my unit has not been selected to receive any of the "leave of absence" lines.

12. On the basis of past practice, another examination will not be given for at least two years. If the present eligibility list is permitted to stand, I will not again be able to seek promotion until that test is given.

JAMES C. JONES

(Sworn to September 4, 1973.)

Affidavit of Gloria De Berry

IN THE
UNITED STATES DISTRICT COURT
OF THE SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

AFFIDAVIT OF GLORIA DE BERRY IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

GLORIA DE BERRY, being duly sworn, deposes and says:

1. I am Black.

2. I am presently employed by the New York City Human Resources Administration in the position of provisional Supervising Human Resources Specialist. I was appointed to that position in September, 1972 and was previously certified as a permanent Senior Human Resources Specialist in December, 1971.

3. Since July, 1972 I have performed the duties of supervising the Human Resources Administration Processing Unit and subsequently I was also assigned to the position of Personnel Manager under the Director of Personnel of the Human Resources Administration. I currently perform the duties of both positions simultaneously.

4. The selection of personnel to serve as provisional Supervising Human Resources Specialists is made by the Human Resources Administration on the basis of recommendations of immediate supervisors, representing their judgment that the persons selected are the most competent to perform the job.

5. Since I began in 1967, my work at the Human Resources Administration has always been rated as Satisfactory or Outstanding in periodic written evaluations and in oral comments by my supervisors. My current supervisor has continued to express satisfaction with my work since my appointment as provisional Supervising Human Resources Specialist.

6. In preparation for the tests to qualify as a permanent Supervising Human Resources Specialist, I regularly attended training sessions. While the subjects discussed at these sessions related to the Supervising Human Resources Specialist job as I knew it, they related to the test I subsequently took only with respect to the procedural or strategical aspects of passing a civil service test generally. The subject matter of the test bore little or no relation to the substantive matter discussed during the training sessions.

7. I took both promotional examination No. 1631 and open competitive examination No. 2013 on October 14, 1972, in an attempt to attain permanent status as a Supervising Human Resources Specialist, I found that many of the questions on examinations Nos. 1631 and 2013 were unrelated to the work performed by, or the knowledge required

to perform the work of, a Supervising Human Resources Specialist. I was notified in August, 1973 that I had received failing scores of 66 on No. 1631 and 63 on No. 2013. Seventy (70) is the passing score.

8. Failure on the examinations precludes one from being placed on the eligibility list and being permanently appointed to the position of Supervising Human Resources Specialist, regardless of length or quality of job performance in that position on a provisional basis.

9. As a result of the promulgation of the eligibility list and my having been given a failing score, persons on the list will be given permanent appointments to the position of Supervising Human Resources Specialist and I will lose my provisional appointment and will revert to the position of Senior Human Resources Specialist, at a substantial loss of salary and status. My supervisor has expressed concern over losing my services.

10. On the basis of past practice another examination will not be given for at least two years. If the present eligibility list is permitted to stand, I will not again be able to seek promotion until that test is given.

GLORIA DE BERRY

(Sworn to September 4, 1973.)

Affidavit of Mary J. Eccles

IN THE
UNITED STATES DISTRICT COURT
OF THE SOUTHERN DISTRICT OF NEW YORK

73 Civ. .....

[CAPTION OMITTED]

AFFIDAVIT OF MARY J. ECCLES IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

MARY J. ECCLES, being duly sworn, deposes and says:

1. I am Black.

2. I am presently employed by the New York City Human Resources Administration in the position of provisional Supervising Human Resources Specialist. I was appointed to that position in February, 1972 and had previously been certified as a permanent Senior Human Resources Specialist in April, 1970.

3. From December, 1970 until February, 1972, I held the title of provisional Principal Human Resources Specialist, while serving as the Director of Parent Involvement in Project Head-start in the Community Development Agency. In this position I supervised eight (8) professional workers. In February, 1972, when I transferred to

the Agency for Child Development as the Director of Parent Involvement, my title was lowered to provisional Supervising Human Resources Specialist, but at no decrease in salary or responsibility. I have held that position up to the present time.

In that position, I supervise a unit of six persons, act as liaison to three City-Wide Parent Policy Councils, and have overall responsibility for parent programs in more than 500 pre-school programs in the City, including yearly elections of parents' committees in these programs.

4. I received a B.A. in Sociology/Psychology from Virginia State College in 1952, and a Masters of Social Work from Columbia University in 1969.

5. The selection of personnel to serve as provisional Supervising or Principal Human Resources Specialists is made by the Human Resources Administrator on the basis of recommendations of immediate supervisors, representing their judgment that the persons selected were the most competent to perform the job.

6. Since I began in 1968 my work at the Human Resources Administration has always been rated as satisfactory or outstanding in periodic written evaluations and in oral comments by my supervisors. My current supervisor has continued to express complete satisfaction with my work since my appointment as provisional Supervising Human Resources Specialist.

7. I took both promotional examination No. 1631 and open competitive examination No. 2013 on October 14,

1972. On the basis of my experience as a Senior and provisional Supervising Human Resources Specialist, I found that many of the questions on examinations No. 1631 and 2031 were unrelated to the work performed by, or the knowledge required to perform the work of, a Supervising Human Resources Specialist. There was not a single question which reflected the nature of my work with parents or community groups and organizations. Nor were there any questions which dealt with the functions of the Agency for Child Development.

8. Further, at least fifteen of the answers contained in the key examination Nos. 1631 and 2013 were contrary to the rules and standard practices of the Human Resources Administration as I know them.

9. I was notified in July, 1973 that I had received a failing score of 65 on No. 2013. Seventy (70) is the passing score.

10. Failure of the examinations precludes one from being placed on the eligibility list and being permanently appointed to the position of Supervising Human Resources Specialist regardless of length of service or quality of job performance in that position on a provisional basis.

11. As a result of the promulgation of the eligibility list and my having been given a failing score, persons on the list will be given permanent appointments to the position of Supervising Human Resources Specialist and I will lose my provisional appointment and will revert to the position of Senior Human Resources Specialist, at a

substantial loss of salary and status. My supervisor has expressed concern over losing my services and I have been assured that I will be allowed to retain temporary status as a Supervising Human Resources Specialist by occupying the position of someone on leave of absence to a higher title. However, this is a temporary and uncertain solution, and in addition, precludes me from attaining permanent status as a Supervising Human Resources Specialist which in turn precludes me from qualifying for permanent status in the next higher line—Principal Human Resources Specialist, a position I held provisionally and performed satisfactorily for over a year.

12. On the basis of past practice another examination will not be given for at least two years. If the present eligibility list is permitted to stand, I will not again be able to seek promotion to the Supervising Human Resources Specialist until that test is given.

MARY J. ECCLES

(Sworn to September 9, 1973.)

Affidavit of Charlotte Jefferson

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

AFFIDAVIT OF CHARLOTTE JEFFERSON IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

CHARLOTTE JEFFERSON, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-captioned matter. I am familiar with the pleadings and affidavits previously submitted on behalf of plaintiffs and make this affidavit in support of relief sought by plaintiffs herein.

2. I am presently employed as a provisional Supervising Human Resources Specialist (HRS). As a provisional Supervising HRS my duties are as follows:

SPECIAL ASSISTANT TO THE COMMISSIONER—
CABINET AFFAIRS, SUPERVISING HRS

General Statement of Duties and Responsibilities:

Under the immediate direction of the Commissioner, with wide latitude for independent judgment, performs

a wide spectrum of assignments, assisting the Commissioner in executing the day by day functions and responsibilities of the office.

Examples of Typical Tasks:

1. Represent the Commissioner at various meetings involving ACD staff, City and private agencies.
2. Confer with Agency and Division heads in order to gather and evaluate data for Commissioner that is required for operational and policy decision making.
3. Prepare correspondence to heads of City, State and Federal agencies and other important sources.
4. Meet with groups and individuals desiring to see the Commissioner. Report and make recommendations to the Commissioner thereof.
5. Participate in evaluating and designing procedures and in coordinating management and administrative functions.
6. Review and prepare non-routine and special correspondence and memorandums on policy matters for the Commissioner.
7. Prepare agenda and secure other necessary back-up materials for the Cabinet meetings as well as other important meetings and conferences.
8. Provide follow-up activity on all assignments to Cabinet members by Commissioner, including giv-

ing technical assistance on program planning or management matters as needed.

9. Maintain status reports and follow-up on work assigned to Field Operations, Program Development and Management from the Commissioner's office.

10. Organize intra-office meetings and maintain day by day calendar of such meetings.

11. Review, screen and abstract reports received from constituent units and make recommendations to the Commissioner.

12. As requested, review and screen confidential information and materials for Commissioner and make recommendations as required.

13. Responsible for coordinating functions of the Commissioner's staff to make certain that work assignments are completed and that the greatest efficiency is maintained.

3. As a provisional Supervising HRS, I have performed my duties in a satisfactory and competent manner, as attested to in the affidavit of my supervisor, Miguel Martinez, a copy of which is attached hereto. However, as a result of my failure to achieve a "passing score" on promotional examination No. 1631, I am not eligible for permanent appointment as a Supervising HRS, and I am immediately vulnerable to being removed from that position. Moreover, unless appointments based on those examinations are enjoined, I will be at a disadvantage when competing with appointees from the lists prepared on the basis

of said examinations for appointment to the job of Principal Supervising HRS, the position immediately above Supervising HRS.

4. Based on my experience as a provisional Supervising HRS, I believe that many of the questions contained in examination No. 1631 are wholly unrelated to my duties as a Supervising HRS. Among other things, I believe that this lack of job relatedness of many of the questions makes the requirement for obtaining 70 in order to be deemed to "pass" the examination an improper cut-off score.

CHARLOTTE JEFFERSON

(Sworn to September 11, 1973.)

AFFIDAVIT OF MIGUEL MARTINEZ ANNEXED TO AFFIDAVIT OF CHARLOTTE JEFFERSON

Civil Action No. .....

CHARLOTTE JEFFERSON,

Plaintiffs,

—v.—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION,

Defendants.

Miguel Martinez, being duly sworn, deposes and says:

1. I am the Deputy Commissioner for the Agency for Child Development of the Human Resources Administration. I am also familiar with the above captioned action and make this affidavit at the request of the attorneys for plaintiffs.

2. I am familiar with the procedure by which Civil Service Supervising Human Resources Specialists are hired. Those provisionals who do not pass the examination are discharged and replaced by persons chosen from the eligible list or demoted to whatever lower permanent Civil Service title and salary they may hold.

3. Mrs. Charlotte Jefferson is a provisional Supervising Human Resources Specialist who did not pass the promotional Supervising Human Resources Specialist examination.

Affidavit of Miguel Martinez Annexed to Affidavit of Charlotte Jefferson

4. Mrs. Jefferson has served in the capacity of Special Assistant to the Commissioner for Cabinet Affairs for the past two years. She has given valuable assistance in designing the organizational structure of this agency as well as assisting in developing the staffing pattern for the agency. She has done an outstanding job in serving as a liaison to other city agencies in the coordination and administration of the Agency for Child Development.

5. It is my opinion that it would be a great loss to this agency should she leave or have to take a demotion in status, title and salary. Her skills and administrative ability have been a vital factor in the overall success of this agency. Her ability to get along well with her peers has been an asset.

MIGUEL MARTINEZ

Sworn to before me
this 8th day of September, 1973

JAMES M. ABRAMSON
Notary Public, State of New York
No. 24-5009400
Qualified in Kings County
Commission Expires March 30, 1974

Second Affidavit of James C. Jones

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

SECOND AFFIDAVIT OF JAMES C. JONES IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

James C. Jones, being duly sworn, deposes and says:

1. I am a named plaintiff in the above-captioned matter. I am familiar with the pleadings and affidavits previously submitted on behalf of plaintiffs. I make this second affidavit in support of the relief sought by plaintiffs herein.

2. I have been employed by the Human Resources Administration for several years in various capacities performing duties which have given me a substantial amount of experience in and knowledge about services rendered by the Human Resources Administration. I am attaching hereto as Exhibit "A" a list of the positions which I have held from March of 1964 to the present time and a description of the duties which I have performed in each of those positions.

Second Affidavit of James C. Jones

3. I am presently employed as a Provisional Supervising Human Resources Specialist. Although I did not pass the promotional examination and am, therefore, ineligible for permanent appointment to that job, I have performed the duties associated with the job in a more than satisfactory manner throughout my employ in the position as attested to by the affidavit of my immediate superior Carolyn Gentile, a copy of which is attached hereto as Exhibit "B."

4. Based on my experience as an employee at HRA, and my review of Promotional Examination 1631, I do not believe that the examination is related to the jobs for which it is being utilized as a prerequisite, for the following reasons:

a) The Social Service Employees Union Contract, as approved by the Administration, lists a series of Human Resources titles with parenthetical designations such as Supervising Human Resources Specialist (MDT), (CPD), (auditing), and (Mgt). Since I was employed in the HRA Division of Personnel shortly after these titles were created and sat in on several of the subsequent planning sessions between the HRA and the NYC Dept. of Personnel, I can say that these parentheticals were created to avoid the anticipated problems resulting from preparing one (1) examination which would be all inclusive of the several occupational disciplines allowed under the generic title of Supervising HRS. The Administration and the Department of Personnel did, in fact, adhere to this plan when the very first Supervising HRS and Principal

HRS examinations were given in 1968 or early 1969. Titles were created with parenthetical designations for the several disciplines utilized in the administration such as: Supervising and Principal HRS Manpower Development and Training (MDT); Supervising and Principal HRS Community Program Development (CPD); and Supervising and Principal HRS Auditing (Aud). Applicants were eligible to take only those examinations appropriate to their respective duties and responsibilities. Subsequently, it was and is the practice of the agency to hire and assign provisionals according to these occupational disciplines although the titles at which these provisionals are paid is simply Supervising HRS.

b) None of the above parentheticals were used in the present promotional examination. (MDT was used in one of the open competitive examinations.) Rather the examination was composed of a potpourri of questions from several occupational disciplines. In short, the examiners created what they had agreed to avoid. One examination was all inclusive of the several disciplines allowed under the generic title of Supervising HRS. Consequently, the examination is not designed to measure the individual applicant's skill and promotability for the job he actually seeks.

c) Without examining specific questions and answers, one can examine the 80 questions in the Supervising HRS promotional examination by placing them into several easily detectable subject matter categories:

Questions #	# of Questions	Subject Matter Categories
1–25	25	Managerial (MGT)
26–31	6	Community Social Services (CSS)
32–40	9	Community Program Development (CPD)
41–56	16	General knowledge, reading comprehension chart reading, etc.
57–71	15	Income Maintenance and Social Services (IM)
72	1	Youth Services Agency (YSA)
73–75	3	Income Maintenance and Social Services (IM)
76	1	Council Against Poverty (CAP)
77	1	General Knowledge
78	1	Youth Services Agency
79	1	Agency for Child Development (ACD)
80	1	Manpower and Career Development Agency (MCDA)
Total	80	

d) Assuming that the applicant for this examination is disciplined in the area of personnel management—general supervision of subordinate staff; interpretation of internal policies and procedures to supervisory staff; preparation of statistical analysis of turnover, hiring and termination ratios; policy planning or principal assistant to one in a policy planning position. Let us further assume that the applicant is to be tested *only* on subject matter relevant to his discipline or experience within the administration. Given these assumptions, we may conclude that the only relevant

questions for this applicant are #'s 1–25, 41–56, 72, 76, 77, 78, 79, 80—a total of 47 relevant questions or a score of 59%. The relevant questions for an applicant with Income Maintenance or Social Services experience are #'s 41–56, 57–71, 72, 73–75, 76, 77, 78, 79, 80—a total of 40 questions or a score of 50%. But this analysis is incomplete. We must assume that all applicants in all disciplines must have, because of the very level of supervisory performance required by the title, some knowledge in the area of management. Accordingly, if we add the 25 relevant managerial questions to this applicant's sum of 40 relevant questions, we get 65 questions or a score of 81%.

e) By utilizing the same method we may conclude that these applicants with auditing or manpower development training experience would have to, because of the absence of relevant questions, rely on luck to pass this examination.

f) To be job related the examination should have been assembled and administered by occupational disciplines as originally intended and originally administered. If this plan had been used, the examination would not have been so heavily weighed in favor of those applicants with social services experience—a majority of whom are white. As presently constituted, the examination virtually excluded those employees who are largely Black; concentrated in the HRA Central Office, Community Development, Child Development and Manpower agencies and who have work experience which is largely other than income maintenance or social services.

g) To further illustrate this problem, two other types of questions may be cited:

1) The first type is composed of material exogenous to my work experience. The assumption is that I have read unrequired material outside of the work location. These questions usually start with: "According to many experts . . .". "Some management experts who have studied . . .", "Recent studies . . . tend to show that . . .". "Research studies have indicated that . . .", "Studies of groups . . .". (See questions #'s 7, 10, 11, 12, 13, 16, 65, 66). My answers to such questions were sheer guesswork. Although I read all the material assigned in the HRA training class, I have yet to find the subject matter of these questions.

2) The second type of questions had answers which were diametrically opposed to what I know as correct for all practical purposes. Regardless of my answer, I know that the correct answer to #25 is C and not B. Having worked in HRA Personnel for almost 5 years and having processed hundreds of consultants, I know that consultants were almost invariably hired to implement programs which they had developed. The answer to #28 (which of the following is not an appropriate function to be performed at the community level?) is incorrectly stated as A. As a practical matter, community corporations review district plans of its delegate agencies for policy compliance even though this review is subject to a further review by the Council Against Poverty. If the correct answer to #28 is A, then the answer to #37—"D" is incorrect since the two are mutually exclusive. The answer to #67 is incorrectly stated as D. The correct answer should have

been A. From my experience in HRA Personnel and in Labor Relations, I know that the administration's loudest opposition came from the unions who opposed the program on the ground that it would take away jobs which were formerly performed by paid employees. To support their position, the union conducted several demonstrations; carried extensive articles in their newspaper and the evening news showed footage of work relief participants performing the work of salaried employees in the Department of Parks.

5. Subsequent to the filing of the complaint, order to show cause and affidavits in support thereof, I have reviewed the statistical information contained in the original papers and compared it with data available to me at the Human Resources Administration. On that basis, I believe that the original papers should have stated that:

On the open competitive 1,487 filed to take the examination, 1,109 people took the examination of which 355 received a passing score. Of these 355 who passed the examination, 276 are employed at HRA. Of the 276 who work for HRA, 217 (78+%) are white, 57 (20+%) are Black or Hispanic and 2 (less than 1%) are Chinese.

On the promotional examination, 253 persons filed to take the examination, 141 people actually took the examination, of which 41 received a passing score. Of these 41 who passed 29 (70.7%) are white and only 9 (22%) are Black, and 3 (7.1%) are Hispanic.

JAMES C. JONES

(Sworn to September 11, 1973.)

EXHIBIT "A" ANNEXED TO AFFIDAVIT OF JAMES C. JONES

ATTACHMENT

HRA Assistant to Deputy Director of Labor Relations 4/73 to present

1. *Duties*

Assist in representing the administration in negotiating contracts between quasi-public vendors of anti-poverty services and unions; prepare background material and witnesses for union representation hearings before the NYLRB; monitor representation hearings before the NYLRB; interpret negotiated contracts and OCB decisions for supervisory staff; maintain liaison with the NYC Office of Labor Relations general counsel, NYC Office of Collective Bargaining and union officials; served on task force to develop the administration's position on contracts with quasi-public vendors of anti-poverty services; served as principal assistant to the Deputy Director of Labor Relations. Monitor grievance procedures and resolve employee labor relations conflicts before they reach the grievance step.

HRA Assistant Director of Personnel 12/71–4/73

2. *Duties*

Supervised units engaged in: the preparation of union welfare fund reports pursuant to collective bargaining agreements for submission to comptroller's

office; the research of Labor Relations complaints of a personnel nature; produce a quarterly statistical analysis of these complaints in an effort to eliminate their sources; the processing of workmen's compensation claims; interpreted workmen's compensation law to supervisory staff; the processing of all payroll advances where payroll delays cause hardships; the orientation of all new employees with respect to employee benefits, union activities and health insurance under the general supervision of the Deputy Director of Personnel.

HRA Chief of Personnel Processing and Control 7/68-12/71

3. *Duties*

Supervised a unit engaged in: the processing of selected candidates for appointment, termination or promotion; interpreted the career and salary plan for the administration; participated in meetings with the City Personnel and Budget officials on the implementation of collective bargaining agreements; the preparation of quarterly statistical analyses of personnel turnover, hiring, vacancies and staffing quotas; execution of reference checks on some 2,500 employees annually. Investigated personnel matters of confidential nature as directed by the Director of Personnel.

Tri State Transportation Commission — Planning Technician III 7/66-7/68

Exhibit "A" Annexed to Affidavit of James C. Jones

4. *Duties*

Supervised a team of planning technicians in the research and preparation of complex analysis notes and technical reports used in the formulation of regional urban planning policies; analyzed and interpreted Bureau of Census demographic and Labor Department statistics; wrote autocode computer programs designed to interpret statistical land use data.

Tri State Transportation Commission—Lead Compiler 2/64–7/66

5. *Duties*

Supervised a team of six compilers engaged in: the measuring and coding of land use activity and labor statistics. Pinpointed areas of potential urban deterioration through the analysis of unemployment and other Department of Labor statistics. Created an address coding guide and a land use inventory data library for keypunched cards and computer printouts.

EXHIBIT "B" ANNEXED TO AFFIDAVIT OF JAMES C. JONES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Civil Action No. .....

JAMES C. JONES, *et al.*,

Plaintiffs,

—v.—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,
et al.,

Defendants.

AFFIDAVIT

CAROLYN GENTILE, being duly sworn, deposes and says:

1. I am the Assistant Administrator for the Human Resources Administration's Division of Labor Relations. I am also familiar with the above captioned action and make this affidavit at the request of the attorneys for plaintiffs.

2. I am familiar with the procedure by which Civil Service Supervising Human Resources Specialists are hired. Those provisionals who do not pass the examination are discharged and replaced by persons chosen from the eligible list or demoted to whatever lower permanent civil service title and salary they may hold.

Exhibit "B" Annexed to Affidavit of James C. Jones

3. Mr. James C. Jones is a provisional Supervising Human Resources Specialist who did not pass the promotional Supervising Human Resources Specialist Examination. I have directly supervised his work and say that he has executed his duties and responsibilities in an outstanding manner since his employment with the Division of Labor Relations on 4/30/73.

4. It would be, in my opinion, a considerable loss to the Division of Labor Relations and the Administration if Mr. Jones left the Division or the Administration as a result of his demotion in title and status and decrease in salary.

5. I am exploring possible means of allowing the Division to retain his services and hopefully, minimize the loss to the Division and Mr. Jones. However, under the prevailing circumstances, it is not possible for Mr. Jones to avoid all losses in salary and status.

/s/ Carolyn Gentile

Sworn to before me
this 7th day of September, 1973

Robert J. Howell, Jr.
Notary Public, State of New York
No. 30-6985410
Qualified in Nas au County
Commission Expires March 30, 1974

/s/ Robert J. Howell, Jr.
Notary Public

Second Affidavit of Mary J. Eccles

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

SECOND AFFIDAVIT OF MARY J. ECCLES IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

MARY J. ECCLES, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above-captioned lawsuit. I am familiar with the pleadings and affidavits which were previously submitted on behalf of the plaintiffs. I make this second affidavit in support of Plaintiffs' Application for a Temporary Restraining Order and for a Preliminary Injunction.

2. I am presently employed as a provisional Supervising Human Resources Specialist (HRS). As a Supervising HRS my job duties from February 1972 to the present can be described as follows:

> Agency for Child Development, Central Administration: Director of Parent Involvement for the Agency for Child Development. Responsible for overall direc-

tion and development of quality parent programs in all publicly funded pre-school programs in New York City; namely, Group Day Care, Family Day Care and Head Start Programs; responsible for organizing and establishing Policy Advisory Committees of parents in more than five hundred (500) funded programs.

Responsible for providing overall direction and training to the ten (10) Parent Involvement Specialists in ten Agency for Child Development Resource Regions in the City; provide direct supervision to the Parent Involvement Specialist at Central Administration; serve as liaison and resource person to the established City-Wide Policy Councils of parents.

Design and implement election procedures for elections of 200 parents to Local Agency for Child Development Advisory Committees of which more than 7,000 parents participated; responsible for organizing seven City-Wide Parent Policy Groups in the City.

Develop and maintain standards and guidelines for the development of parent involvement in all programs. Responsible for overall direction and coordination of all parent involvement activities in the District Offices. Provide overall responsibility for the continued evaluation of all parent programs. Responsible for development of training programs in the area of parent involvement for the Agency for Child Development staff.

3. As a provisional Supervising HRS, I have in the past, and continue to, perform my duties in a competent and satisfactory manner, as attested to in the affidavit of my

supervisor, Miguel Martinez, a copy of which is attached hereto. However, as a result of my failure to achieve a "passing score" on open competitive examination No. 2013 and not being informed of passing or failing promotional examination No. 1631, I am not eligible for permanent appointment as a Supervising HRS, and am immediately vulnerable to being removed from that position. Moreover, unless appointments on those examinations are enjoined, I will be ineligible to compete for promotion to Principal HRS, the next higher-rated position above Supervising HRS, at the next scheduled examination. If the Court allows appointments based on the results of examinations No. 1631 and No. 2013, then all of those appointees will have a substantial advantage over me in competition for future jobs as Principal HRS.

4. Based on my experience as a provisional Supervising HRS, I believe that many of the questions contained in examinations 1631 and 2013 are ambiguous and two of the answers could be considered correct, and other questions have absolutely no relationship to the functions which I perform as a Supervising HRS, as shown in the attached analysis.

MARY J. ECCLES

(Sworn to September 11, 1973.)

AFFIDAVIT OF MIGUEL MARTINEZ ANNEXED TO SECOND AFFIDAVIT OF MARY J. ECCLES

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MARY J. ECCLES, *et al.*,

Plaintiffs,

—v.—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, *et al.*,

Defendants.

MIGUEL MARTINEZ, being duly sworn, deposes and says:

1. I am the Deputy Commissioner for the Agency for Child Development of the Human Resource Administration. I am also familiar with the above captioned action and make this affidavit at the request of the attorneys for plaintiffs.

2. I am familiar with the procedure by which civil service Supervising Human Resources Specialists are hired. Those provisionals who do not pass the examination are discharged and replaced by persons chosen from the eligible list or demoted to whatever lower permanent civil service title and salary they may hold.

Affidavit of Miguel Martinez Annexed to Second Affidavit of Mary J. Eccles

3. Mrs. Mary Eccles is a provisional Supervising Human Resources Specialist who did not pass the promotional Supervising Human Resources Specialist examination nor the open competitive Supervising HRS.

4. Mrs. Eccles, has served in the capacity of Director of Parent Involvement, working directly out of Commissioner McMurray's office for the past 18 months. Three (3) years prior to this time she worked in the same capacity out of the Director's office of the Central New York City Head Start Office. She is a very competent, reliable and conscientious worker and shows excellent supervisory skills in supervising her own staff. She designed and developed the first City-Wide election procedures for more than 500 day care centers in New York City. She has the overall responsibility for parent programs in three publicly funded agencies, namely, Head Start, Group Day Care and Family Day Care. She has done an outstanding job in providing training and technical assistance to central staff as well as to agency staff.

5. It is my opinion that it would create a tremendous loss to the agency should she leave or have to take a demotion in status, title and salary. It would be most difficult to replace her with someone with less experience, skills and knowledge in the work she performs. She does an outstanding job in representing the Commissioner at various inter-departmental meetings as well as outside the agency.

MIGUEL MARTINEZ

Affidavit of Miguel Martinez Annexed to Second Affidavit of Mary J. Eccles

Sworn to before me
this 8th day of September 1973

/s/ James M. Abramson
Notary Public

James M. Abramson
Notary Public, State of New York
No. 24-5009400
Qualified in Kings County
Commission Expires March 30, 1974

JOB ANALYSIS ANNEXED TO AFFIDAVIT OF
MARY J. ECCLES

The City of New York

AGENCY FOR CHILD DEVELOPMENT
HUMAN RESOURCES ADMINISTRATION
240 CHURCH STREET, NEW YORK, N. Y. 10013
Telephone: 553-6524
GEORGIA L. McMURRAY, *Commissioner*

September 7, 1973

Submitted by Mary J. Eccles
Agency for Child Development

Analysis of the Sup. SHRS Test in respect to procedures that are contrary to HRA Policy and job related functions performed by Supervisors. The following listed questions are ambiguous and at least two (2) answers could be considered correct:

Question # (1) Either answer (a) or (c) could be correct.

Question # (2) Either answer (a) or (d) would be correct. In fact, all four answers are appropriate depending upon an individuals judgement and personal experience.

Question # (3) Either answer (a) or (b) would be correct.

Question # (5) Either answer (a) or (d) would be correct.

Question # (6) Of all the inappropriate answer, answer (a) might be considered a possible correct answer.

Question # (8) As a Social worker, I can truly state that three of these answers can be considered correct and only no. (d) would be considered highly inappropriate by any professional worker! The question is totally subjective!

Question # (10) This question is totally irrevelant in my job function and the possible answers given I would not consider. I would emphatically state that under such circumstances the subordinate would not have a good or close relationship with his immediate supervisor.

Question #(11) This question can be considered totally ambivalent and unless a person has read or analyzed such a study the answer would only be a guess. I have never heard or read such a study. This is true, I am sure, of the majority of minority members who took this examination. In addition this question would be appropriate for a person in the field of management analysis or management efficiently expert.

Mary J. Eccles
Agency for Child Development

Question #(12) Same as question #(11).

Question #(13) This question is totally subjective and has no meaning to the ob I perform.

Question #(14) This definetly could be considered a guess answer if a person did not know the meaning f "holo effect."

Question #(15) As a Social Worker trained in interviewing techniques either answer (a) or (d) could be the correct answer. Even using either of these two (2) answers could be discriminatory if the interviewer was not familiar with ethnic factors that might be involved.

Question #(16) Totally irrevelart to my ob as a supervisor as I had more accidents during the past year than my workers whom I supervise!

Question #(17) A research analyst or program planner would know this answer. This question would be totally baffling to a minority employee who has not had graduate training in "Research and Evaluation not to mention a college degree.

Question #(18) Either answer (a) or (b) could be considered correct in my agency.

Question #(19) Same comment as question #(17):

Question #(22) Answer could be (b) or (c) to a supervisor who is not familiar with organizational charts as most supervisors are not trained in this area.

Question #(24) Either answer (a) or (d) could be considered the right answer.

Question #(27) Either (a) or (c) could be considered depending upon the amount of knowledge supervisors had in the broad spectrum of HRA services.

Question #(29, 30, 31) are totally unfamiliar to me as I am not aware of this Department within the structure of HRA. Therefore I could only guess these answers. I am sure that other supervisors who took this examination had little or no knowledge of the functions or responsibibilities of this program. As of this date I still do not have this kind of information. The average supervisor would not have this knowledge.

Job Analysis Annexed to Affidavit of Mary J. Eccles

Mary J. Eccles,
Agency for Child Development

Question #(37)	Unless a worker is highly political, this question would seem highly unanswerable particularily for grass root minority persons.
Question #(41 thru 58)	Have absolutly no revelance to the ob I perform. Learning charts and statistics based on such have no revelance to the job I perform now or have performed during the past five (5) years that I have been employed at HRA.
Question #(56)	If one had not read the Commissioner's Report how could this question be answered?
Question #(57)	One would have to be aware of the laws, regulations and procedures: The constitutent agencies of HRA, such as ACD Central are not aware of the ramifications of decisions made by the HRA in this area.
Question #(58)	A person working in Agency for Child Development would not know this fact unless they had read it in the newspapers.
Question #(60)	This item is not an on-going discussion within constituent HRA agency and unless a staff person has a special interest in this and have read the newspapers they would not be able to answer this question.
Question #(61 & 62)	Are guess answers depending what is read in the news media and how it is interpreted.
Question #(65)	Is strictly discriminatory depending upon whether a person read the United States Census Bureau Report.
Question #(67)	Answer (a) or (d) can be considered correct answers or the Union has taken position (a) and welfare recipients have taken position (d).
Question #(68 69 & 70)	Are most unfair to HRA employees in general and minority groups in specific who are not aware or kept abreast of Social Security acts, Supremes Court Ruling or State Legislature Ruler that affect poor people. These questions are totally discriminatory and racists as the majority of persons on welfare come from minority groups and have nothing at all to do with supervision in my job function.
Question Nos.	71, 72, 73, and 74 have absolutely no revelance to my job as a supervisor.
Question #(75)	Is resonable only becuase I formerly worked for the City's Assistant Poverty Agency.

Job Analysis Annexed to Affidavit of Mary J. Eccles

Mary J. Eccles
Agency for Child Development

Question #(77) & 78) Not related at all the ob I perform and I am not aware of such broad knowledge to answer these questions.

Question #(80) Is unrelated to my job function although I am aware of this agency's function. Either answer number (b) or (d) could be answered by persons who were not familiar with the job functions of this agency. This is to me considered discriminatory.

Second Affidavit of Gloria DeBerry

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

SECOND AFFIDAVIT OF GLORIA J. DEBERRY IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND FOR A PRELIMINARY INJUNCTION

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

GLORIA J. DEBERRY, being duly sworn, deposes and says:

1. I am one of the named plaintiffs in the above-captioned lawsuit. I am familar with the pleadings and affidavits which were previously submitted on behalf of the plaintiffs. I make this second affidavit in support of Plaintiffs' Application for a Temporary Restraining Order and for a Preliminary Injunction.

2. I am presently employed as a provisional Supervising Human Resources Specialist. As a Supervising HRS my job duties can be described as follows:

> Responsible for interviewing Candidates for positions within the Agency—determine qualification based on job description and applicant's experience. Verify educational and experience history. Responsible for

follow-up regarding Classification and evaluation of position requested. Responsible for approval and submission of forms to the City Department of Personnel requesting approval of Candidate's hiring. Interview and make appointments for all provisional, temporary, and permanent appointments with Human Resources Administration. Under the direction of the Director of Personnel Services, Processing, with latitude for independent action or decision, is responsible for supervision and maintenance of all personnel actions requested in the Human Resources Administration, Community Development Agency, Manpower and Career Development agency and the Agency for Child Development. This includes a volume of over 4,000 records. Investigation of Personnel matters of a confidential nature and making recommendations based on findings to the Director of Personnel Services, Processing. Furnish services of employee verification for properly submitted request on employee or previously employed incumbents and supervise inquiries of verification request on prospective employees. Maintains liaison with Human Resources Administration, Central Payroll and Personnel Services investigating and resolving problems that may develop in these areas. Acts as liaison with the City Department of Personnel, Division of investigation verifying Personnel matters such as education background, military service and citizenship status. Carry out special assignments as directed by the Director of Personnel Services, Processing. Initiate New York City Depart-

ment of Investigation Clearance request on Personnel at a salary of $19,584 and above for HRA, MCDA, CDA and ACD.

3. Since my appointment as Supervising HRS, I have performed the duties associated with that job in what can only be characterized as an outstanding manner, as is reflected in the Performance Report evaluating my work performance for the one-year period from April 1972 to April 1973. However, as a result of my failure to achieve a "passing score" on promotional examination No. 1631 or open competitive examination No. 2013, I am not eligible for permanent appointment to the position of Supervising HRS; and, unless appointments based on those examinations are enjoined, I will in all likelihood be denied an opportunity to compete for promotions to Principal HRS when examinations are next given for that classification. If the Court does not enjoin appointments based on the results of examinations No. 1631 and No. 2013 and the appointees from those examinations are thus allowed to compete in the next examination for Principal HRS, I will be forced to watch numerous employees who are presently in lower-rated jobs or who do not presently work in the Human Resources Administration move to higher-rated jobs in advance of me.

4. Based on my experience as a provisional Supervising HRS, I do not believe that the questions asked on examination Nos. 1631 and 2013 were related to the work performed by, or the knowledge required to perform the duties of, a Supervising HRS.

GLORIA J. DEBERRY

(Sworn to September 11, 1973.)

PERFORMANCE REPORT ANNEXED TO SECOND AFFIDAVIT OF GLORIA J. DeBERRY

(See Opposite) ☞

Form M-302
1/23/73

The City of New York
Human Resources Administration

PERFORMANCE REPORT

(Prepare in triplicate. Attachments must be stapled to this form)

Name of Employee (surname first)	Period Covered
GLORIA DEBERRY	From 4/72 To 4/73
Civil Service Title	**Position (Job Title)**
SUPV. HUMAN RESOURCE SPECIALIST	PERSONNEL MANAGER

Work Location

HUMAN RESOURCES ADMINISTRATION, OFFICE OF PERSONNEL SERVICES, 271 CHURCH ST., NY, NY

Each of the applicable aspects of performance listed below shall be checked, in the appropriate column, as follows:

Items 1-14 **All Positions** *(check each item)*	Outstanding	Satisfactory	Unsatisfactory
1. Understanding of Job Responsibility	✓		
2. Interest in Learning the Job and Progress in Performance	✓		
3. Ability to Organize Work		✓	
4. Adherence to Required Deadlines	✓		
5. Initiative and Resourcefulness		✓	
6. Response under Pressure and in Emergencies	✓		
7. Acceptance and Utilization of Supervision	✓		
8. Quantity of Work Performed	✓		
9. Quality of Work Performed	✓		
10. Cooperative Relationships with Co-workers	X	✓	
11. Behavior in Relation to the Job	X	✓	
12. Absence Record	X	✓	
13. Lateness Record	X	✓	
14. Adherence to Other Personnel Policies and Regulations	X	✓	

Items 15-17 **As Applicable to Position** *(check item or items)*	Outstanding	Satisfactory	Unsatisfactory
15. Utilization of Department's Policies and Procedures			
16. Constructive Relationships with Clients			
17. Positive Relationships with Public			

Items 18-21 **All Supervisory Positions** *(check each item)*	Outstanding	Satisfactory	Unsatisfactory
18. Staff Training and Development			
19. Staff Management			
20. Establishment and Enforcement of Controls and Work Standards			
21. Assessment of Staff and Evaluation of Performance			

This report was discussed with me on 5/4/73 — Gloria DeBerry
Signature of Employee

This report was not discussed with the employee because _____

H Lustig
Signature of Immediate Supervisor — Job Title — Date

Signature of *Location Administrator* — Job Title — Date

Signature of *Office or Program Director* — Job Title — Date

Affidavit of Harry I. Bronstein

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

HARRY I. BRONSTEIN, being duly sworn, deposes and says:

1. I am Chairman of the New York City Civil Service Commission and Director of the City Department of Personnel.

2. This affidavit is submitted in opposition to plaintiffs' application for a temporary restraining order and preliminary injunctive relief barring appointments to the position of Supervising Human Resources Specialist (hereinafter "Sup. HRS").

3. On July 18, 1973, the New York City Civil Service Commission established two "eligible" lists for the position of Sup. HRS. One list was established as the result of Examination No. 1631, which was a promotional examination for that position. Approximately 141 persons took the written test of which 46 passed. The other list resulted from Examination No. 2013, an open competitive examination. Approximately 1109 persons appeared for the written test, of which approximately 462 passed.

4. The title of Sup. HRS, which was first classified in 1968, was but one of a series of titles created by the City Civil Service Commission to establish a new career ladder in the Human Resources Administration (HRA). The career ladder is set forth below, with each title "promoting" to the next higher:

Human Resources Specialist
Senior Human Resources Specialist
Supervising Human Resources Specialist
Principal Human Resources Specialist

In addition, several "specialty" titles were created to meet what was then felt to be unique requirements for certain areas of HRA's operations.

5. When these titles were created, they were filled by "provisional" employees for the obvious reason that no examinations had yet been given.

6. Thereafter, open competitive examinations were given for these titles, either in the generic title or in specialties. No "promotional" examinations were or could be given because there were no permanent employees in any title.

7. These examinations resulted in "permanent" appointments to the several titles. In addition, pursuant to the Rules and Regulations of the City Civil Service Commission, a number of permanent employees in other civil service titles were transferred and re-classified to appropriate Human Resources titles. As relevant here, there are approximately 5 permanent appointees in the generic title

of Sup. HRS, and approximately 25 others in the specialty titles of Sup. HRS.

8. Thereafter, HRA greatly expanded its programs, which necessitated the hiring of additional personnel at all levels in the Human Resources occupational group on a provisional basis.

9. Consequently, the City Civil Service Commission ordered a series of examinations, including the examinations for Sup. HRS, as required by State law (see, generally, Section 65 of the Civil Service Law).

10. The promotion examination for Principal HRS, a managerial title, was also ordered by the Commission, but at a later date, so that those who were appointed as a result of successfully competing in the examination for Sup. HRS would have an opportunity to take the promotion examination to this managerial position.

11. Examinations Nos. 1631 (promotion) and 2013 (open competitive) for the position of Sup. HRS were given in October, 1972, and the resulting eligible lists were established on July 18, 1973.

12. A written test for promotion to Principal HRS is scheduled for October 26, 1973. Applications for this examination are now being received.

13. The Civil Service Commission ordered only a promotional examination to Principal HRS in contemplation of there being sufficient numbers of candidates in the posi-

tion of Sup. HRS to qualify for the promotion examination and to replace all provisionals serving in the title of Principal HRS, now numbering approximately 100.

14. Pursuant to State Law (Civ. Serv. Law, Sections 50, 51, 52 and 65), the Commission may have to order and hold an open competitive examination to fill the positions now held by provisionals in the title of Principal HRS, should the court stay the permanent appointment of Sup. HRS from the available lists. This is so because the present number of permanent Sup. HRS is demonstrably insufficient to replace the provisionals presently serving as Principal HRS, even assuming that all present permanent Sup. HRS's took and passed the promotion examination.

15. If this Court stays permanent appointments to Sup. HRS from the existing lists, those eligibles currently on the challenged lists, will be deprived of the opportunity to take the promotional examination now scheduled for October 26, 1973. Indeed, their loss may be permanent if an open competitive examination is given in which they may have to compete (if they meet the eligibility requirements) with possibly several thousand individuals. The successful candidates would then be appointed permanently to the position of Principal HRS, which, as noted previously, is the highest competitive Civil Service position in the occupational group. If the Court grants preliminary injunctive relief, this injury may be suffered by the eligibles prior to trial on the merits of the suit in which the City defendants may ultimately prevail.

16. The injury to plaintiffs, is, at best, remote. Even if they prevail, they would not be entitled to appointment as Sup. HRS, but merely to an opportunity to compete in a new examination.

17. Upon information and belief, none of the named plaintiffs, will be deprived of employment if their motion is denied. Upon the termination of their provisional employment, they will be returned to their permanent position of Senior Human Resources Specialist. Indeed, plaintiffs Eccles, Jefferson and Jackson allege that they have personally received assurances that they will be temporarily kept on as Supervising Human Resources Specialists in vacancies created by persons on leave of absence to higher titles.

It is worth noting that if appointments to the position of Sup. HRS are permitted to proceed as scheduled, those appointed who then pass the examination for Principal HRS will open up positions as Sup. HRS upon their appointment to the higher position. Thus, plaintiffs will not be irreparably injured by such appointments.

18. It is also noted that the lists in question before the Court were established on July 18, 1973. Plaintiffs have waited until September to commence their action. During this time, many persons on the eligible list were offered permanent appointment to be effective September 14. On information and belief, individuals not presently employed by HRA have either given notice or left their prior employment.

19. Plaintiffs have specific ethnic data only with respect to the promotional examination, which accounts for approximately 41 persons.

As to the open competitive examination, plaintiffs have presented no information as to the ethnicity of the approximately 1109 persons who competed. In the open competitive written test, approximately 462 persons passed, of which 276 are allegedly employed by HRA. Plaintiffs allege that only 21% of that group were Black or Hispanic, but cannot relate that to the number of Blacks and Hispanics who took the examination, that number being unknown to both plaintiffs and defendants. Unlike the showing made in *Vulcan Society of the New York City Fire Department* v. *Civil Service Commission,* 73 Civ. 201 (S.D.N.Y. June 12, 1973), plaintiffs here do not even have a "head count", as imprecise as that is, or any other supportive evidence other than speculation and surmise.

20. Plaintiffs have also failed to establish the requisite likelihood of success on the merits. The Court is respectfully referred to the affidavit of Solomon Wiener, Assistant Personnel Director for Examinations, which shows that, contrary to plaintiffs' erroneous assumptions about the method of preparation of Exam. Nos. 1631 and 2013, these examinations were prepared in a thorough and professional manner.

WHEREFORE, it is respectfully submitted that plaintiffs motion for extraordinary relief should be denied.

HARRY I. BRONSTEIN

(Sworn to Spetember 10, 1973.)

Affidavit of Solomon Wiener

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

SOLOMON WIENER, being duly sworn, deposes and says:

I am the Assistant Personnel Director for Examinations for the New York City Department of Personnel and have been in that position since January, 1972. Prior to that my assignments were as follows: Director of Examinations, 1970-72; Assistant Director of Examinations, 1967-70; Division Chief, 1959-67; Assistant Division Chief, 1955-59; Civil Service Examiner 1946-55; Examining Assistant, 1937-42.

I received a degree of B.S. from Cornell University in 1936 and received a Degree of Master of Public Administration from New York University in 1946.

The examinations for Supervising Human Resources Specialist (hereinafter "Sup. HRS") were prepared in a thorough and professional manner. A careful and thorough job analysis was conducted by Leonard Y. Rosenberg, an experienced and capable professional personnel examiner who has been employed by the New York City Department of Personnel since 1956 in various assignments including examinations, evaluations and classification of positions in a wide variety of occupational groups.

Affidavit of Solomon Wiener

The job analysis, or field audit (a copy of which is attached), was used to develop the Notice of Examination, the various tests, as well as the scope of the written and oral tests. In addition, in the preparation of these examinations there was continual liaison and consultation with representatives of the Human Resources Administration.

In view of the highly specialized subject matter it was deemed desirable to employ special examiners to assist in the development and formulation of the tests for these examinations. Therefore the Department of Personnel obtained the services of two highly qualified subject matter specialists, both of whom are Black, and both of whom are concerned with the development of culture fair and job-related tests. A brief background sketch of the two special examiners is attached hereto.

The work of the special examiners was coordinated by a professional personnel examiner of the Department of Personnel who has been with the Department since 1959 and who has prepared examinations in the various human services occupational groups (e.g. Social Services, Youth Services, Human Resources) for about 12 years.

These examinations were carefully prepared over a several month period and represent, in my judgment, a high degree of professionalism and care.

SOLOMON WIENER

(Sworn to September 10, 1973.)

JOB ANALYSIS ANNEXED TO AFFIDAVIT OF SOLOMON WIENER

Roscoe Brown, Jr., Phd. Director, Institute of African Affairs and Professor of Education, New York University; author, *The Black Experience* (1972) and The Negro Almanac, Classical Studies in Physical Activity (1967), and numerous articles in professional journals; member, Examination Commission, Manhattan and Bronx Transit Authority; Consultant on Discrimination in the use of tests, New York City Human Rights Commission; member, Committee on Afro-American Studies Proficiency Exam, New York State Education Department; member, Advisory Committee on Urban Education, Educational Testing Service.

John H. Simpson, Associate Professor, Rutgers University School of Social Work; MSW, and Doctoral candidate, Columbia University School of Social Work; formerly Program Administrator, Comprehensive Child Care Project, Albert Einstein College of Medicine; Consultant, Training Resources for Youth, in Bedford-Stuyvesant Section of Brooklyn; Director, Morningside Community Center; Assistant Director and Acting Director, Wiltwyck School for Boys; Youth Services Director, Lower Eastside Neighborhood Association, numerous other social work posts.

BACKGROUND SKETCH ANNEXED TO AFFIDAVIT OF SOLOMON WIENER

THE CITY OF NEW YORK

Intradepartmental Memorandum

To: Acting Chief, Examining Division S

From: Leonard Y. Rosenberg, Senior Personnel Examiner

Date: February 4, 1972

Subject: Field Audit Report—Promotion to Supervising Human Resources Specialist, Exam. No. 1631 and Open Competitive examination for Supervising Human Resources Specialist, Exam. No. 2013.

During the period October 1–7, 1971, various work locations of the Human Resources Administration and its constituent agencies were visited and observed as follows:

Human Resources Administration (H.R.A.)—
- Office Services Division
- Payroll Division
- Personnel Division
- Purchasing Division

Agency for Child Development (A.C.D.)—
- Head Start

Community Development Agency (C.D.A.)—
- Budget Review Office
- Field Bureau—Divisions I & II
- Program Planning Division
- Publications Division

Background Sketch Annexed to Affidavit of Solomon Wiener

Manpower and Career Development Agency (M.C.D.A.)—
Central Information Control Division
Office of 1st Deputy Commissioner for Operations
Office of the On-The-Job Training Coordinator
Program Planning Division

Supervising Human Resources Specialists interviewed and observed:

Louis Bello, Supervising Human Resources Specialist (Manpower Development and Training); Ruth Ribuoli, Supervising Human Resources Specialist; Alan Ripin, Supervising Human Resources Specialist (Community Programs), and Lois Williams, Supervising Human Resources Specialist (Management).

Persons interviewed to confirm, clarify, augment and provide additional information were:

Howard Matelli, Assistant Director of Personnel; Dorothy Stone, Principal Human Resources Specialist, Assistant Director of Bureau of Job Development, M.C.D.A.; Javier Antompietri, Principal Human Resources Specialist, Director of Budget Review, C.D.A.; and Fred Mussenden, Principal Human Resources Specialist (Community Programs) District Officer, Field Division II, C.D.A.

Examples of Typical Tasks: (Each task is followed by a designation which corresponds with an area of the test plan herewith submitted.)

Background Sketch Annexed to Affidavit of Solomon Wiener

Tasks Observed:

Supervision of staff (V). Solve problems of staff (V). Conduct staff meeting for control and safety purposes (V, VI).

Tasks Learned About Through Interviews:

Negotiation for funds to permit on-the-job development of disadvantaged residents of poverty areas of N.Y.C. (I, II, III, IV, VII, VIII). Maintains relationships with federal and state agencies involved in anti-poverty activities in the field of development of people (I, II, III, IV, VII). Obtain additional employers who will accept Trainees (I, II, III, IV, VII). Serve as consultant to Neighborhood Manpower Service Centers (N.M.S.C.) (I, II, III, IV, VI, VII, VIII). Write, direct and produce radio and television shows for broadcast on municipal, educational and commercial stations in N.Y.C. e.g. Community School Board functions; economic development in disadvantaged areas of N.Y.C.; consumer education. (I, II, III, IV, VII). Prepare newsletters and press releases for the above (I, II, III, IV, VI, VII). Provides technical assistance to delegate agencies (I, II, III, IV, VI, VII, VIII). Reviews activities to determine if delegate agencies are achieving their goals (I, II, III, IV, VI, VII, VIII). Assists community corporations and delegate agencies in dealing with other agencies to achieve goals as originally established and approved by the Federal Office of Economic Opportunity for each program year (I, II, III, IV, VI, VII, VIII). Encourages Community Corporations to develop expertise so that they can

become autonomous of C.D.A. supervision (I, II, III, IV, VI, VII, VIII).

Advise agency executives re office services—layout, telephone, equipment, etc. based on knowledge of duties and responsibilities in the line and staff segments of HRA and its constituent agencies (I, II, III, IV, VI, VII, VIII). Work closely at sites with officials, construction people, architects, engineers, community representatives and real estate experts to be certain that future needs will be included in the plans (I, II, III, IV, VI, VII, VIII). Set up contracts and systems to ensure compliance therewith re printing, cleaning, supplies, equipment, reproduction, rentals, etc. (I, IV, VI, VII, VIII). Survey new equipment and recommend rental, purchase, etc. (I, IV, VI, VII, VIII). Prepare budget for Office Services Division (I, IV, VI, VIII).

Knowledge and Skills Required: (There is a Roman Numeral following each factor which corresponds to an area of the Test Plan).

1. Knowledge of functions of public and private human services agencies. (I)
2. Familiarity with developments and problems in programs affecting human resources and the amelioration or elimination of poverty. (II)
3. Knowledge of community and public relations. (III)
4. Skills in deciding problems relative to such on-the-job situations as office services, payroll, budget and personnel. (IV)

Background Sketch Annexed to Affidavit of Solomon Wiener

5. Ability to supervise, direct and develop staff. (V)
6. Familiarity with machine, equipment and supply purchase, usage and management including safety. (VI)
7. Skill in language usage including vocabulary and reading comprehension. (VII)
8. Ability to perform arithmetic computations and interpret tables, graphs and charts. (VIII)

Duties and Responsibilities

The statement in the notice of examination is correct and was confirmed by Mr. Howard Matelli, Assistant Director of Personnel of the Human Resources Administration.

There are no special medical/physical requirements for this position.

The Human Resources Administration wishes an opportunity to review the notice of examination before publication.

LEONARD Y. ROSENBERG

Leonard Y. Rosenberg
Sr. Personnel Examiner

Approved by:

SOL BUCHMAN

Sol Buchman, Acting Chief
Examining Division S

Order of Judge Lasker in *James C. Jones, et al.*

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 3815
M.R.L.

[CAPTION OMITTED]

ORDER

Whereas, this case came before the Court on September 5, 1973 in the presence of counsel for the defendants with plaintiffs seeking a temporary restraining order restraining defendants from making any permanent appointments to the position of Supervising Human Resources Specialists and from terminating or otherwise interfering with the provisional appointments of the named plaintiffs and members of their class who are provisional Supervising Human Resources Specialists; and

Whereas, the parties have submitted affidavits, briefs and through their counsel appeared before the Court to present oral argument on September 12, 1973 all of which has been considered, and

Whereas, it appearing to the Court that defendants are about to make permanent appointments to the position of Supervising Human Resources Specialists on the basis of examinations Nos. 1631 and 2013 and eligible lists pro-

mulgated pursuant to said examinations and schedule a further examination for Principal Human Resources Specialists on October 26, 1973, and that such action would tend to render a judgment herein ineffectual in that the now vacant positions of Supervising Human Resources Specialists would be filled and the plaintiffs herein would become ineligible to take the October 26 examination to compete for positions of Principal Human Resources Specialists, and, it appearing that plaintiffs would suffer immediate and irreparable injury, loss or damages unless the defendants are restrained before trial can be had, to wit, plaintiffs will be demoted or returned to the position of Senior Human Resources Specialists or even lower-rated positions and will be deprived of an opportunity to compete for positions of Principal Human Resources Specialists at the next scheduled examination; and

Whereas, the Court has scheduled this matter for trial on October 29, 1973; and

Whereas, the Order set forth below will effectively preserve the interests of all parties *pendente lite,* will not compromise the efficient functioning of the Human Resources Administration's activities involved herein, and will not cause undue burden, prejudice or loss to persons on the eligible lists, or persons seeking positions of Principal Human Resources Specialists;

WHEREFORE, it is hereby ORDERED that:

1. The defendants are hereby temporarily restrained from making any permanent appointments to the position of Supervising Human Resources Specialist pending adjudication of the merits by the Court; and

2. the defendants are temporarily restrained from terminating the provisional appointments of the named plaintiffs and other Black or Hispanic persons who are provisional Supervising Human Resources Specialists in contemplation of or for purposes of replacement by permanent appointees from eligible lists Nos. 1631 and 2013 pending adjudication of the merits by the Court; however, this is not in any way meant to imply that any provisional Supervising Human Resources Specialist has any greater right to retain his employment than otherwise would be the case, except as provided in this Order; and

3. the defendants are temporarily restrained from holding a promotional or open competitive examination for the position of Principal Human Resources Specialist pending adjudication of the merits by the Court;

4. that this matter be set down for a continued hearing on October 29 when the factual issues raised by the pleadings and papers submitted herein may be fully presented by the parties.

M. E. L.
United States District Judge

Dated: New York, New York,
September 14, 1973.

Plaintiffs' First Interrogatories to Defendants

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

M.E.L.

73 Civ. 3815

[CAPTION OMITTED]

To:

NORMAN REDLICH, Esq.
Corporation Counsel, by
PAULA J. OMANSKY
Assistant Corporation Counsel
Municipal Building
New York, N.Y. 10007
Attorneys for Defendants.

Plaintiffs hereby request that defendants City of New York Human Resources Administration and Jules M. Sugerman, New York City Department of Personnel, New York City Civil Service Commission, Harry F. Bronstein, James W. Smith and David Stadthauer answer the following written interrogatories under oath in accordance with Rule 33, Federal Rules of Civil Procedure. Said answers shall be filed within thirty (30) days after service hereof or such time as ordered by the Court. All interrogatories shall be deemed to be addressed to all of the defendants, and all answers thereto shall reflect the cumu-

lative knowledge of all defendants, their servants, agents, and employees. In answering, defendants are requested to identify, specifically and in a form suitable for use in a subpoena, all documents, records, or other written material containing, setting forth, or pertaining to the information provided in answering; or in the alternative to attach copies of such materials.

Unless a contrary meaning appears in context, the following definitions apply:

a) the "Commission" refers to the defendant New York City Civil Service Commission;

b) the "HRA" refers to defendant City of New York Human Resources Administration;

c) "Agency" refers to each division of the HRA, such as, e.g., the Agency for Child Development, Division of Labor Relations, etc.;

d) "HRS" refers to any person employed in the job series "Human Resources Specialist," at any level, including senior, supervising, and principal HRS;

e) "level" refers to each title or classification in the HRS series.

Other terms are used according to normal usage.

1. Describe the complete organizational structure of the HRA, specifying all agencies in which personnel of any rank are employed.

2. Specify each agency in which one or more HRS of any level is or has been assigned.

3. Describe briefly but thoroughly the functions of each agency listed in answer to the preceding interrogatory.

4. For each level of Human Resources Specialist, and, to the extent distinctions exist, for each agency of the HRA, state:

a) the current salary level;

b) the complete job description, if any is available; and if none is available a general description of the functions and duties of the job;

c) the precise source, documentary or human, for the information set forth in response to preceding sub interrogatory b;

d) the qualifications for employment at each level.

5. With reference to the HRA as a whole and to each agency therein, state the following information as of the date these interrogatories are answered:

a) the total number of employees;

b) the number of black employees;

c) the number of Hispanic employees;

d) the total number of employees holding permanent appointments in each HRS level;

e) the number of black employees holding permanent appointments in each HRS level;

f) the number of Hispanic employees holding permanent appointments in each HRS level;

g) the total number of employees in each HRS level who are provisionally appointed;

h) the number of black employees in each HRS level who are provisionally appointed;

i) the number of Hispanic employees in each HRS level who are provisionally appointed.

6. For the four levels of Human Resources Specialists only, list the educational requirements, training, experience, tests, evaluations or other criteria used as factors in the determination of suitability for appointment or promotion to each level, the relative weight of each, and the grade, analysis, or other indicia requisite to acceptability for permanent appointment to each rank.

7. For the four levels of Human Resources Specialist, describe briefly but completely the process and criteria by which an applicant is permanently appointed to such position, including, if applicable:

a) the process and criteria by which an applicant is placed on the list of eligibles for appointment or promotion to such position; and

b) the process and criteria by which a person on the list of eligibles is selected for permanent appointment to such position.

8. For the four levels of Human Resources Specialists, describe briefly but completely the process and criteria by which an applicant is provisionally appointed to such position.

9. For the four ranks of Human Resources Specialists, state whether and in what circumstances, a person who is neither permanently nor provisionally appointed to such position, may be assigned to perform the duties and functions of such position.

10. Identify each examination given for the four levels of Human Resources Specialists at any time, by number and date. For each such examination, state separately and in detail:

a) type of questions asked, e.g., essay, multiple-choice, true-false, or combinations thereof, indicating how much of the examination each type of question made up;

b) the subject matter of the questions asked, indicating how much of the examination each type of matter made up;

c) the total number of persons who registered to take the examination;

d) the number of blacks and Hispanics who registered to take the examination;

e) the total number of persons who actually took the examination;

f) the total number of blacks and Hispanics who actually took the examination;

g) the total number of persons who achieved a passing score on the examination;

h) the total number of persons who were placed on the eligible list established pursuant to the examination;

i) the number of black persons who achieved a passing score on the examination;

j) the number of black persons who were placed on the eligible list established pursuant to the examination;

k) the number of Hispanics who achieved a passing score on the examination;

l) the number of Hispanics who were placed on the eligible list established pursuant to the examination;

m) the total number of persons who received permanent appointments to the position for which the examination was given, during the lifetime of the eligible list established pursuant to the examination;

n) the number of black persons who received permanent appointments to the position for which the examination was given, during the lifetime of the eligible list established pursuant to the examination;

o) the number of Hispanics who received permanent appointments to the position for which the examination was given, during the lifetime of the eligible list established pursuant to the examination;

p) the name, current address and then title of the person or persons who had any part in developing each of the examinations.

11. State whether there has been any significant change since the creation of the titles in the form, nature, or con-

tents of the examinations referred to in the preceding Interrogatory. If so, specify the changes and describe when, why, and how they came about.

12. With respect to the most recent promotional and open competitive examinations given for the level of supervising HRS, provide the following information:

a) a list of all persons, by name, address, and race or ethnic background if available, who registered for the examination;

b) a list of all persons, by name, address, and race or ethnic background if available, who took the examination;

c) the score of each person listed in answer to (b) above on the examination;

d) the position, if ranked at all, of each person listed in answer to (b) above on the eligible lists established pursuant to the examinations.

13. If information regarding race and ethnicity is not available for all candidates, provide same for those candidates taking either test who are now, or have been, employees of HRA, from employee records.

14. Has the Department of Personnel or the HRA ever attempted to assess the impact of the examinations and examination procedures for permanent appointment to the positions of supervising Human Resources Specialist upon black and Hispanic persons?

15. If the answer to Interrogatory 14 is "Yes", describe in detail what was discovered. ncluding, in particular, any information or data with respect to,

a) whether such examinations and examination procedures discourage black or Hispanic persons from applying for such examinations;

b) whether such examinations and examination procedures are culturally biased in the sense that black and Hispanic persons are likely to do less well than white persons because of their different cultural and educational backgrounds or for any other reason;

c) the relative success black and Hispanic persons have achieved on said examinations as compared to white persons;

d) identify by name, title, and address all persons who performed such assessment or knows of its results.

16. Are you aware of any reports or studies of any kind relating to the impact of the examinations and examination procedures for the level of supervising Human Resources Specialist upon black and Hispanic persons, including in particular the most recent examinations. If so, describe the nature of such studies, and state the location of any documents relating to them, and the names and addresses of persons having custody of such documents, and of persons having knowledge of such studies.

17. Has there ever been any attempt on the part of the Department of Personnel or the HRA to develop selection criteria for any position at the four ranks of Human Re-

sources Specialists or to analyze the qualities and characteristics appropriate for performance in those positions on the basis of an empirical survey or other objective research? If so:

a) Describe in detail the research, analyses, or studies involved;

b) Give the names or titles of all studies or other documents relating to such research, analyses or studies; and

c) state the name, address, qualifications and title of each person who participated in the development of criteria.

18. Is there any written job analysis for the four ranks of Human Resources Specialist? If so:

a) state the name, titles, nature, location and custodian of the documents constituting such analyses; and

b) set forth in full the contents of said analyses or descriptions.

19. State in detail how the job analyses referred to in answer to Interrogatory 18 were prepared, including in your answer the following information:

a) what persons or groups of persons were responsible for such preparation. Give the names, titles, office addresses and professional qualifications of the relevant persons or agencies;

b) on what specific sorts of investigations did they base their conclusions;

c) when and where were their investigations conducted, and when were the analyses first prepared; and

d) indicate whether and when the initial analyses referred to in part (c) above were modified, and in what specific respects.

20. Do the defendants contend that they have previously determined the examinations referred to in Interrogatories 10 and 12 above are "content-valid," as that term is professionally understood? If so, do the defendants contend that the determination of content-validity was performed in accordance with the EEOC Guidelines on Employee Selection Procedure, 29 C.F.R. §1607?

21. Do the defendants in fact contend that the examinations referred to in Interrogatory 10, and particularly that referred to in Interrogatory 12, are "content-valid"? If so, do the defendants contend that their content-validity is demonstrable under the EEOC Guidelines procedures?

22. State with respect to all examinations listed in the answer to Interrogatories 10 and 12 and any similar examination scheduled for the future, whether there has been any analysis of the examination and job performed to determine content validity. If there has been any such analysis, state with respect to each such analysis:

a) which examination (name and date) was analyzed;

b) when the analysis was conducted;

c) the names, addresses and relevant professional experience and qualifications of the persons conducting the analysis;

d) the names, dates, titles, nature and custodian of any documents relating to such logical analysis;

e) describe in detail the methodology of the study on which any analysis was based;

f) whether any revisions in the form, nature, or contents of similar examinations has occurred as a result of any such analysis. If so, provide full details.

23. Is there a criterion-related validity study completed, underway, or planned, with respect to any of the examinations listed in the answer to Interrogatories 10 and 12? If so, state with respect to each such study:

a) which examination (name and date) was involved;

b) when the study was conducted or is scheduled for completion;

c) the names, addresses and relevant professional experience and qualifications of the persons conducting the study;

d) the names, dates, titles, nature and custodian of any documents relating to such study;

e) describe in detail the methodology of the study on which any analysis was based.

24. Do the defendants contend that any of the examinations referred to in Interrogatories 10 and 12 have been determined to be valid by an empirical (criterion-related) validity study? If so, do the defendants contend that such validity has been established in accordance with the EEOC

Guidelines on Employee Selection Procedure? Justify any affirmative answer with specificity.

25. Have the defendants made any effort to gather job-performance evaluations, by ordinary work evaluations or otherwise, and compare them to scores on any of the examinations referred to in Interrogatories 10 and 12? If so, provide full details as to when, by whom, by what methodology, with what results, and the pertinent documentary evidence. If not, explain why no such study has been undertaken.

26. Are there any studies or analyses completed, underway or scheduled concerning the reliability and/or objectivity of the examinations listed in the answer to Interrogatories 10 and 12? If so, state with respect to each such study or analysis:

a) which examination (name and date) was involved;

b) when the study was conducted or is scheduled for completion;

c) the names, addresses and relevant professional experience and qualifications of the persons conducting the study;

d) the names, titles, nature and custodian of any documents relating to such study;

e) describe the methodology of the study;

f) state in detail the results of such study.

27. For each of the individuals identified by name or office in response to Interrogatory 10(p), describe fully any

professional training and qualifications they have in psychometrics, testing, and test construction.

28. State whether Civil Service Commission or HRA employs or consults with, on any regular basis, experts in psychometrics or tests and test construction other than city employees with reference to the examinations referred to in Interrogatories 10 and 12; and give the names, addresses, positions and responsibilities of any such persons, their professional experience and credentials, and the nature of any assistance, advice, etc. which they provided.

29. Describe fully defendants' policy and practice with respect to the provisional appointment of Human Resources Specialists.

30. List, by name, race, agency and length of service, both as provisionals and in other positions in HRA, all persons in the employ of HRA, who as of September 1, 1973 held provisional appointments as Supervisory Human Resources Specialists.

31. For those persons listed in response to the preceding interrogatory who are black or Hispanic, state for each with specificity:

a) the date of employment with HRA, and the title to which appointed;

b) the date of appointment as provisional Supervisory Human Resources Specialist;

c) the name, title, and agency of the person who recommended the provisional appointment;

d) the basis on which that recommendation was made, including work record, seniority, etc.

e) what would have happened to each such person at the time of defendants' contemplated appointment of permanent Human Resources Specialists, but for the Court's temporary restraining order?

32. Identify each person who was notified by defendants in August or September, 1973, of his or her permanent appointment to the level of Supervisory Human Resources Specialist and who would have, but for this Court's temporary restraining order, assumed those positions on or about September 14, 1973. Include in the identification at least the following:

a) name, race, ethnic group;

b) whether holding provisional Supervisory HRS status as of September 1, 1973;

c) agency at which employed as of September 1, 1973;

d) score on most recent Supervisory HRS examination, and position on most recent eligible list;

e) specific location and assignment as Supervisory HRS, if determined prior to entry of Court's order.

33. How many appointments to the rank of Supervisory and Principal Human Resources Specialist do the defendants reasonably anticipate making in the next (i) 6 months, (ii) one year, (iii) two years, assuming the Court does not intervene in the appointment process?

34. Describe in detail any affirmative efforts that have been made since January 1, 1969 by either the Department of Personnel or HRA to:

a) increase the number of black and Hispanic applicants for the four levels of Human Resources Specialists;

b) increase the number of permanent black and Hispanic appointees to those levels;

c) design educational and experience prerequisites and examination and examination procedures so that black and Hispanic applicants who are qualified to act as Human Resources Specialists will be enabled to be eligible to take and to succeed on the examinations for such positions.

35. State in detail the results of any and all efforts described in answer to the preceding interrogatory. Do the defendants consider these efforts successful, in whole or in part; and in what respects?

36. For each agency listed in response to Interrogatory 2, state the approximate racial and ethnic composition of the clientele.

37. State whether incumbent personnel of any level in the HRA were invited to, or did, submit or suggest questions or subject matter areas for use on the most recent examinations for supervisory Human Resources Specialist. If so, state:

a) by whom they were invited to do so, or permitted to do so;

b) the name, race, rank, and location of any officer who did so;

nat consideration was accorded the suggestion and hether the question or area, in any form, appeared on the examination.

Respectfully submitted,

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Defendants' Response to Second Request for Production of Documents

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

M.E.L.

73 Civ. 3815

[CAPTION OMITTED]

1. In response to interrogatories 1, 2 and 3 the booklet entitled "Reorganizational plan for the City of New York Human Resources Administration" describes the complete organizational structure of the Human Resources Administration. (See Attachment 1.) Chart 1 page 13 indicates the overall department structure. The text on pages 7 through 11 describes briefly but thoroughly the functions of each agency. Each of the major units shown in chart 1 employs people in the Human Resources Specialist series.

2. In response to interrogatory 4 there are no distinctions with respect to existing titles according to agencies. The descriptions apply to a title in its entirety wherever it may be found.

a. The current salary for each Human Resources Specialist title is as follows:

Defendants' Response to Second Request for Production of Documents

Title Code No.	Title	Salary
56016	Human Resources Specialist Trainee	8,300
56020	Human Resources Specialist	9,000–12,300
56030	Senior Human Resources Specialist	10,800–15,175
56040	Supervising Human Resources Specialist	12,600–17,550
56050	Principal Human Resources Specialist	S.G. 32 13,100 and over

b. and c. The descriptions of functions and duties are contained in the examination announcements provided in the request for documents.

d. The qualifications are contained in the examination announcements provided in Attachment 1A.

3. In response to interrogatory 5, Table 1 below indicates the total number of employees in the Human Resources Administration by agency. Table 2 indicates the total number of employees holding permanent or provisional appointments in each Human Resources Specialist level. The table also shows the number of black and Hispanic employees in each category. Information on the race or ethnic background of the employees has been obtained either by inquiry of people who know the employee or by inspection of pictures in the personnel folders. In view of this, there may be inaccuracies regarding the classification for some employees.

Defendants' Response to Second Request for Production of Documents

The Human Resources Administration does not have definitive information available on the total number of black and Hispanic employees in the agency. Since there are almost 30,000 empl[illegible] would be an extremely arduous task to initiate a [illegible]r inspect photographs in all of the personnel folders to determine race or ethnic origin. However, two different ethnic surveys have been conducted by the Human Resources Administration in the past several years.

HRA STAFFING BY AGENCY

Table 1

Administrative Staff	245
Policy Coordination	41
Public Affairs	37
General Counsel	374
Inspector General	141
Department of Management	4127
Department of Services	6250
Department of Employment	748
Department of Income Maintenance	15602
Department of Community Development	238
Total	27803

Defendants' Response to Second Request for Production of Documents

Table 2

	Permanent Status					Provisional Status			
	Total	W	Black	Hispanic		Total	Black	Hispanic	W
Hrs	113	36	63	14	2	169*	92	26	54
Sr. Hrs ..	187	72	95	20	17	212**	92	21	82
Supv. Hrs	7	6	1	0	6	187***	72	20	89
Princ. Hrs	3	1	2	0		55	32	13	10

* Two (2) ethnic origin not determined.
** 17 ethnic origin not determined.
*** 6 ethnic origin not determined.

4. The response to interrogatory 6 is contained in the various notices of examinations submitted in Attachment 1A.

5. In response to interrogatory 7, the process and criteria for a) and b) would be similar for the four ranks. We assume that the intent of the interrogatory relates to actions subsequent to the examination to place individuals on lists and selected for the position.

a) *Process and criteria—current series of examinations* —After the examination is given the proposed key answers are posted and individuals who participated in the promotion examination can enter protests against the proposed key. Protests are reviewed by examiners and experts as appropriate. A validation report on the key answers and protests is prepared by the examiners and sent to the Commission for decision. A final key is then posted. The papers are graded and those who have achieved a passing score are placed on the eligible list.

Seniority must be determined for a promotion examination, and the factoring in of seniority may affect the standing on eligible list. The eligible lists are then compiled the Commission adopts the lists, and the candidates are notified. Included in the process is a procedure for appealing "Manifest errors." Personal and job qualifications are examined and investigated according to the terms of the notice of examination.

b. When the City Department of Personnel certifies a Civil Service List to the Human Resources Administration, the Administration determines how many vacancies it has to fill in that title. Candidates are then called in for interview in the order they appear on the list. The agencies which have vacancies interview the candidates. Each candidate is considered for at least one position. The interviewers describe the duties and responsibilities of the position and review the candidate's background and experience as it applies to this job. The interviewer then makes a recommendation to the HRA Director of Personnel who effects the appointment or rejects the candidate in accordance with the "one-in-three rule." (See Section 61 of the Civil Service Law.)

6. In response to interrogatory 8, if there is no civil service list in existence for a given title in the Human Resources series and one of the Human Resources Administration agencies has a vacancy in that title, the agency head has the authority and responsibility to suggest candidates for the position. Each agency head has his or her own way of recruiting people and evaluating

candidates. Agency heads will post announcements requesting applications for the vacancy and will take referrals from any source that is available. As a general rule, an effort is made to promote from within the ranks. The agency head will generally make his choice based on his interview with the candidates in which he will examine the candidates background and experience as it relates to the job to be done.

After the agency head makes his selection, the candidate is sent to the Office of Personnel Services for processing. At that time he fills out the necessary forms for provisional appointment. These forms include a DP-69 application which is sent to the City Department of Personnel where it is reviewed to determine whether the candidate meets the qualifications for the title. When the Human Resources Administration receives notice from the City Department of Personnel that the candidate does qualify for the title, he is offered a start date.

7. In response to interrogatory 9, the Human Resources Administration does not generally assign people to perform duties and functions of a position when that person is neither permanently or provisionally appointed to the position. It is only in an emergency situation that it will ask someone to perform duties and functions of a position if he is not in that title. In this case, the person is asked to perform on a "acting" basis and is generally required to sign a waiver indicating that he is willing to perform out of title work. If out of title work is necessary, every effort is made to either reclassify the job function or pro-

mote the employee to the appropriate title as soon as possible.

8. In response to Interrogatory 10, see Attachment 2.

9. The following is in response to Interrogatory 11: There have been the following changes in the form nature and content of the examinations referred to in the preceding interrogatory:

a. 1) *1969 Examinations*:

The examinations given in 1969 for the lower levels of the Human Resources Specialist series; i.e., Human Resources Specialist, Exam. No. 7110, and Senior Human Resources Specialist, Exam. No. 7112 consisted of a written, multiple-choice test (weight 50) and an oral test (weight 50). In accordance with the Notices of Examination (No. 7110 and No. 7112 submitted herewith), the pass mark on the written test for Human Resources Specialist was established as the score of the candidate who ranked 700th in the order of comparative rating, and the pass mark on the written test for Senior Human Resources Specialist was the score of the candidate who ranked 500th in the order of comparative rating. Only 655 candidates actually took the written test for Human Resources Specialist. Therefore, as a result of using the method of setting the pass mark set forth by the Notice of Examination, all candidates who took the written test did in fact pass the test. In the case of the examination for Senior Human Resources Specialist, 749 candidates took the writ-

ten test and 508 candidates passed. (Eight candidates had tying scores.)

The 1969 examinations for Supervising Human Resources Specialist, Exam. No. 7114, and Principal Human Resources Specialist, Exam. No. 7111, were based on a rated evaluation of training and experience (copies of the training and experience rating key are attached), and an oral interview for the purpose of final evaluation of training and experience and determination of the extent of which the candidate's training and experience has fitted him to perform the duties of the position.

2) *1972 Examinations*:

All examinations given in 1972 consisted of a written, multiple-choice test and an oral test. In the case of the examinations for the lower levels; i.e., Promotion to Human Resources Specialist, Exam. No. 1631, Human Resources Specialist, Exam. No. 1097, Human Resources Specialist (MDT), Exam. No. 1095, Promotion to Senior Human Resources Specialist, Exam. No. 1626, Senior Human Resources Specialist, Exam. No. 1099, and Senior Human Resources Specialist (MDT), Exam. No. 1094, the written test was competitive, and the oral test was qualifying only. Relative weights were written test, weight 85, seniority weight 15, for the promotion examination, and written test, weight 100, for the open-competitive examinations. In the case of the 1972 examinations for Promotion to Supervising Human Resources Specialist, Exam. No. 1631, Supervising Human Resources Specialist (open-competitive), Exam. No. 2013, and Supervising Human Re-

sources Specialist (MDT), Exam. No. 2012, both written and oral tests were competitive. Relative weights were written test, weight 35, seniority, weight 15 and oral, weight 50, for the promotion examination, and written test, weight 50, oral, weight 50, for the open-competitive examinations. A pass mark of 70% was required for all tests.

It should be noted here that an examination based on a rating of training and experience only is not deemed appropriate for a promotion examination because seniority, rather than ability, would be the deciding factor. Therefore it was necessary to construct an examination which would rank the candidates based on their relative abilities. After consultation with the agency, the Commission made the decision to give both a competitive written and competitive oral for the promotion examination. It was deemed both proper and economical to use the same testing methods for the open-competitive examination scheduled at the same time, since many of the items of the promotional examination would be appropriate for the open competitive examination.

10. In response to Interrogatory 12 plaintiffs are respectfully referred to Attachments 3 and 3(a). Attachment 3 is a computer run-off of the persons who applied for the open competitive and promotion examinations for Supervising Human Resources Specialist. Examination grades and positions on the eligible list are indicated next to the names of those who passed on the extreme right hand corner. Those who failed the examination are listed

with a "11" next to their designation of sex. Those who absented themselves, that is applied for the examination but did not appear are listed with an "AB" next to the designation of their sex. Individuals who were not qualified or not eligible for these examinations are listed with either a "NE" in the column next to the column designating sex or a "30" in that column.

Attachment 3(a) is a duplicate computer run-off which has been completed by the Human Resources Administration by indicating in pen on the extreme left-hand side the ethnicity of those individuals whom the agency can identify. This is in response to Interrogatory 13.

11. As the response to Interrogatory 14 is no, no response to Interrogatory 15 is called for.

12. The response to Interrogatory 16 is no.

13. In response to Interrogatory 17 it is noted that the Human Resources Specialist occupational group is a relatively recent addition to the classification schedule of the City Civil Service Commission. These titles, their functions, the qualifications necessary, and the selection criteria were developed jointly by the New York City Department of Personnel and the Human Resources Administration (HRA). In addition it is noted that the Bureau of the Budget was also involved in the process of creating this occupational series. In a lengthy series of meetings, conferences and correspondence high level personnel from these agencies were involved in developing appropriate qualification requirements for these positions. These discussions and meeting continued even after the

titles were initially classified and it must be noted that the situation was fluid at all times due to the fluid nature of the responsibilities of HRA and of the role to be played by those individuals employed in the Human Resources Specialist occupational group in fulfilling the obligations of the agency to the public. Those involved in this classification process, which includes determining the duties and responsibilities of the position and the qualification requirements were, from the Department of Personnel, the following individuals: Solomon Wiener, Assistant Personnel Director of Examinations, Mildred Perlman, Assistant Director of Classification and Compensation, Sam Feldman, Executive Assistant to the Personnel Director (now retired), Dorothy Simon, Senior Personnel Examiner (now retired). In addition, in developing the initial specifications the Director of Personnel Solomon Hoberman (now retired) was also actively involved. From the Human Resources Administration, the following individuals were involved: Enid Beaumont, former Director of HRA personnel, Harold Basden, former Director of HRA personnel, John Forrer, former Deputy HRA Administrator (who have all left City employment), and Howard Matelli, Assistant Director of Personnel. In addition, the HRA Administrator, Jules Sugarman participated with Mr. Hoberman in an active way.

After the positions were classified there was input from many of the above-mentioned individuals in developing the actual selection criteria and analyzing the qualities and characteristics appropriate for performance of persons in these positions. For the first series of examinations for

the Department of Personnel. Mr. Philip Sousk, Administrative Personnel Examiner (now retired) and Edward Scheinkman, Administrative Personnel Examiner participated in developing the selection criteria.

After the first series of examinations the Department of Personnel and HRA continued to work closely to revise the job specification and other aspects of the occupational group based on experience, and on the continuing changing conditions within the agency. Mr. Leonard Y. Rosenberg, Administrative Personnel Examiner worked closely with Messrs. Basden and Matelli during this period. Revised qualification requirements were also developed. During the early part of 1973 Mr. Rosenberg conducted a careful job analysis of the operations of HRA in order to develop selection criteria for the Human Resources Specialist occupational group. A copy of the job analysis, or field audit has been submitted in the response to the request of production of documents. It is noted that personnel from HRA were involved with this analysis, and they are listed in the report. While the job analysis is an important source for developing the current examinations, it is noted that all of the other processes described herein also played an important role in developing appropriate selection devices.

The address for all individuals currently working with the Department of Personnel listed above is 220 Church Street. The address of individuals listed above currently working with HRA is 250 Church Street, New York, N.Y.

14. In response to Interrogatory 18 please see field audit attached in response to the request for production

of documents. The custodian of the documents is Examining Division S of the Department of Personnel.

15. Plaintiffs are respectfully referred to the field audit itself for a full and complete response to all of the information requested in Interrogatory 19.

16. The response to Interrogatories 20 and 21 is yes.

17. In response to Interrogatory 22, it is noted that respondents believe that the examinations here subject to attack, i.e. the examinations for Supervising Human Resources Specialist, both promotion and open competitive were prepared in accordance with the guidelines on employee selection promulgated by the EEOC and are content valid. Respondents contend that the job analysis determines what is done on the job. From the job analysis there was developed a test plan, and from the test plan and the analysis the actual test items were prepared. There has been no studies subsequent to the giving of the examination to determine content validity.

18. The response to Interrogatory 23 is no, as is the response to Interrogatory 24.

19. The answer to Interrogatory 25 is no.

20. In response to Interrogatory 26 respondents note that apart from an item analysis which was prepared for these exams, no other reliability study was prepared.

Defendants' Response to Second Request for Production of Documents

21. In response to Interrogatory 27, plaintiffs are respectfully referred to Attachment 4.

22. The response to Interrogatory 28 is no.

23. In response to Interrogatory 29, defendant Department of Personnel notes that pursuant to the Civil Service Law of the State of New York provisional appointees are to be replaced by permanent employees from a list resulting from a civil service examination as soon as practicable in order to prevent a provisional from continuing in his position for a period in excess of nine months. The Department of Personnel expends every effort to meet this statutory requirement.

24. The answer to Interrogatories 30, 31(a) and 31(b) are contained in Attachment 5. The answer to Interrogatory 31(c), (d) and (e) is contained in Attachment 6.

25. The answer to Interrogatory 32 is contained in Attachment 7.

26. In response to Interrogatory 33, it is difficult to determine the number of appointments that will be made to the rank of Supervising Human Resources Specialist and Principal Human Resources Specialist in the next six months or two years. This depends to a large extent on decisions made by the Mayor's Office and the Bureau of the Budget. At the time the temporary restraint order was given, we expected to make approximately 190 appointments from the list. If all of the current HRA pro-

grams were to continue on the current levels over the next six months, we could expect about another 20 appointments. Estimates of the number of appointments to be made in one or two years are simply too dependent on factors beyond our control.

27. In response to Interrogatory 34(a) and (b) the Department of Personnel in cooperation with other City agencies seeks to increase the number of Black and Hispanic applicants for positions as Human Resources Specialist though the use of extensive recruitment efforts. For the examinations in the Human Resources Specialist series given in 1972 the following efforts were undertaken:

1. Individual job announcements (flyers) were prepared for these titles. (Attached)

The individual flyers were distributed together with application forms to approximately 118 Regional and Neighborhood Manpower Centers, Community groups, Model Cities Area Offices; to 56 major Hispanic organizations; 53 major Black organizations and to approximately 10 Neighborhood Employment Offices of the New York State Employment Service. The information that applications were available at these organizations was included in the job flyers.

2. In addition, individual job flyers, without applications, were distributed to approximately 213 Community organizations, 28 other ethnic organizations, 90 community and ethnic newspapers and the balance of 51 State Employment Offices.

Defendants' Response to Second Request for Production of Documents

3. In addition to the distribution of the individual job flyers and applications to the above organizations, a monthly job listing which included these titles was distributed to approximately 2,200 organizations including those enumerated above. Additional organizations which received the monthly jobs flyer included: Addiction Institutions, City agencies, Public Libraries, other governmental organizations, training and rehabilitation organizations, addiction treatment programs, organizations for the retarded and handicapped, private counseling services, etc.

4. The Recruitment Division also designed the special application card which was required so that applicants could indicate whether they wanted 25% of the written examination to be in a foreign language of their choice.

Information about these examinations which was distributed to the Model Cities Administration was, in turn, disseminated to about 100 outlets and affiliates of that Administration.

Attached as Attachment 8 are samples of job flyers and a listing of that portion of our monthly mailing list to which we distributed individual job flyers and application forms.

In response to 34(c) it is noted that experience prerequisites include anti-poverty experience as a mandatory requirement. Black and Hispanic groups have this type of experience to a greater extent than other groups on a percentage basis but this requirement was included primarily because it is the type of experience appropriate to perform satisfactorily the duties of a Human Resources

Specialist at any rank. We also eliminated the mandatory requirement of a high school diploma.

28. In response to Interrogatory 35 the Department of Personnel believes from a strictly visual observation that our recruitment efforts were successful in attracting Black and Hispanic candidates for these examinations.

29. In response to Interrogatory 36, the Human Resources Administration does not generally have information on the racial and ethnic composition of its clientele. While data might be available for specific programs in specific areas, it would be an onerous task to try to develop data for each program in each agency.

30. In developing the series of examinations for the Human Resources Specialist occupational group and the test plans for those examinations, including the most recent examination for Supervising Human Resources Specialist, various employees of the Human Resources Administration were consulted by the examiners of the Department of Personnel on appropriate subject matter areas to be tested for. Further, the Human Resources Administration requested that a weighted position of the Supervising Human Resources Specialist examinations consist of an oral examination, which suggestion was approved by the Department of Personnel. Plaintiffs are referred to the job analysis for the names of Human Resources Administration employees with whom discussions took place, and to the response to Interrogatory 17.

Attestation of Leonard Y. Rosenberg

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

LEONARD Y. ROSENBERG, being duly sworn, deposes and says:

I am Assistant Chief, Office of General Examining for the New York City Department of Personnel and have read the foregoing answers to interrogatories.

The answers to the interrogatories were culled from the records and files of the Department of Personnel, which are voluminous. The responses to the answers and the material contained in the various appendices are to the best of my knowledge true and complete. However, due to the vast nature of the records to be searched and the various places where information germane to the interrogatories may have been located, it is possible that additional material may yet be located. Should that occur respondents will, through Counsel, submit such additional material to the plaintiffs.

The answers to the interrogatories are true except as to those matters which are responded to upon information and belief, in which case I believe them to be true.

LEONARD Y. ROSENBERG

Sworn to before me this
26 day of November, 1973

WILLIAM ROSKIN
Notary Public, State of New York
No. 31-8661960
Qualified in New York County
Commission Expires March 30, 1974

Attestation of Herbert Rosenzweig

STATE OF NEW YORK,
COUNTY OF NEW YORK, *ss.*:

HERBERT ROSENZWEIG, being duly sworn, deposes and says:

I am the Director of Personnel for the Human Resources Administration and have read the foregoing answers to interrogatories.

The answers to the interrogatories were culled from the records and files of the Human Resources Administration, which are voluminous. The responses to the answers and the material contained in the various appendices are to the best of my knowledge true and complete. However, due to the vast nature of the records to be searched and the various places where information germane to the interrogatories may have been located, it is possible that additional material may yet be located. Should that occur respondents will, through Counsel, submit such additional material to the plaintiffs.

The answers to the interrogatories are true except as to those matters which are responded to upon information and belief, in which case I believe them to be true.

HERBERT ROSENZWEIG

Sworn to before me this
day of November 1973

Answer to Interrogatory 30, 31a, 31b

The attached table provides the name, race, agency and length of service (both as provisionals and in other positions in the Human Resources Administration) of all persons in the employ to the Human Resources Administration, who as of September 1, 1973 held provisional appointments as Supervising Human Resources Specialists. As in answer to interrogatory 5, the race or ethnic has been determined by either first hand knowledge or reference to pictures in the personnel folders.

ANSWER TO INTERROGATORIES NO. 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRA	TITLE OF FIRST APPT.
Carmen Luciano	Hispanic	A.C.D.5	8/13/73	1/15/73	Adm. Prog. Specialist
Dewey Brown	Black	S.S.C.	7/23/73	9/18/72	Child Counselor
Louis Patane	White	Family Planning	6/24/73	6/11/73	Supv. HRS
Margaret Ford	Black	General Counsel	6/18/73	6/18/73	Supv. HRS
Sara M. Smith	Black	A.C.D.	6/19/73	6/18/73	Supv. HRS
Lucy Winslow	White	Office of Education	6/11/73	3/3/69	Sr. Steno
Agatha Davis	Black	Office of Review	6/4/73	9/7/70	Sr. HRS
Marguerita Greenfield	White	Office of Education	5/28/73	12/6/71	School Comm. Liaison
Jack Licht	White	C.D.A.	5/14/73	5/14/73	Supv. HRS
Beverly Pello	White	Dept. of Employment	5/7/73	5/7/73	Supv. HRS
James Ortner	White	Family Planning	4/23/73	10/4/71	Sr. Clerk
Mark I. Stempa	White	Personnel	4/23/73	7/9/70	HRS
Tatiana Craig	White	C.D.A.	4/23/73	7/7/69	Sr. HRT
Lewis R. Chesler	White	Public Affairs	4/11/73	4/11/73	Supv. HRS

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRS	TITLE OF FIRST APPT.
Kathleen A. Mazzucco	White	A.C.D.	3/26/73	3/26/73	Supv. HRS
E. Rodriguez	Hispanic	A.C.D.	3/26/73	5/3/71	Sr. HRS
William E. Huggins	Black	A.C.D.	3/19/73	7/14/69	HRS
Robert L. Riley	White	Department of Employment	3/19/73	12/27/66	Counselor Int.
Harold Rogers	Black	Executive Office	3/12/73	3/12/73	Supv. HRS
Marian Fulson	Black	A.C.D.	2/20/73	5/1/72	Sr. HRS
Linda R. Wolf	White	Dept. of Employment	1/29/73	9/20/71	Sr. HRS
Clinton Berry Jr.	Black	A.C.D.	1/29/73	1/29/73	Supv. HRS
Barbara J. Comins	White	O.M.C.	1/15/73	10/23/67	Caseworker
Allen L. Pinchoff	White	O.M.C.	1/15/73	8/6/62	Soc. Inv. Tr.
R.E. Brooks		Public Affairs	1/2/73		Supv. HRS
I. Malave	White	Dept. of Employment	12/28/72	3/22/71	Sr. HRS
M. Flood	Black	C.D.A.	12/26/72	11/14/66	Supv. Steno
Carolyn Cabell		O.M.C.	12/18/72	10/1/62	Soc. Inv. Tr.
Ivery Jacobs	Black	Personnel	12/18/72	3/23/70	Sr. HRT

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRA	TITLE OF FIRST APPT.
J.A. Peterson	White	Policy Planning	12/18/72	7/6/72	Sr. HRS
Josephine F. Clark	Black	A.C.D.	12/11/72	12/11/72	Supv. HRS
T.M. Ohlson	White	Fiscal	12/11/72	12/11/72	Supv. HRS
J.J. Bernauer	White	Office of Education	12/4/72	8/2/65	Caseworker
Kennith Asbedian	White	Dept. of Employment	11/27/72	12/28/70	Sr. HRS (IJT)
R. Buonocore	White	Office of Review	11/27/72	11/27/72	Supv. HRS
Patricia V. Douglass	Black	A.C.D.	11/22/72	7/6/64	Soc. Inv. Tr.
Casto F. Rodriguez	Hispanic	A.C.D.	11/22/72	10/25/64	Caseworker
Sonja Dominis	Hispanic	A.C.D.	11/21/72	2/17/64	Soc. Inv. Tr.
King J. Coleman	Black	A.C.D.	11/20/72	1/2/63	Soc. Inv
Jane Poindexter	Black	Public Affairs	11/20/72	11/20/72	Supv. HRS
Doris P. Smith	Black	A.C.D.	11/20/72	10/21/68	Caseworker
Phyllis Stothers	White	A.C.D.	11/20/72	11/20/72	Supv. HRS
Cheryl A. Williams	Black	A.C.D.	11/20/72	11/20/61	Soc. Inv.
Doris M. Robinson		A.C.D.	11/20/72		

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRA	TITLE OF FIRST APPT.
Kenneth A. Riberiro	Hispanic	A.C.D.	11/20/72	11/24/69	Caseworker
Sadye L. Logan	Black	A.C.D.	11/20/72	12/6/65	Caseworker
Robert S. Leach	White	A.C.D.	11/20/72	1/11/68	Caseworker
Paula Feinstein	White	A.C.D.	11/20/72	9/16/68	Caseworker
Cecily H. Swift	White	Policy Planning	11/20/72	11/20/72	Supv. HRS
Richard J. Allen	Black	A.C.D.	11/20/72	7/6/69	Caseworker
Carol A. Brown	Black	A.C.D.	11/20/72	9/3/69	Caseworker
Frederic H. Cantlo	Black	A.C.D.	11/20/72	8/3/64	Soc. Inv. Tr.
Elois S. Dupree	Black	A.C.D.	11/20/72	11/3/65	Caseworker
Caryl K. Foote	White	A.C.D.	11/20/72	8/8/66	Caseworker
Caron A. Smith	White	O.M.C.	11/13/72	11/13/72	Supv. HRS
D.B. McMorrow	White	CAMPS	11/1/72	7/28/69	Sr. HRS
A. Northern	Black	Dept. of Employment	10/30/72	3/1/71	Sr. HRS
Deborah Kaplan	White	Spec. Serv. for Adults	10/10/72	10/10/72	Supv. HRS
David Murry	Black	C.D.A.	10/9/72	7/28/69	HRS

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES NO. 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRS	TITLE OF FIRST APPT.
O. Franks	White	Office of Education	10/2/72	10/2/72	Supv. HRS
Sone A. Takahara	Other	S.S.A.	9/25/72	9/25/72	Supv. HRS
Gloria DeBerry	Black	Personnel	9/14/72	7/1/67	HRS
Jack Schutzer	White	B.I.M.	9/11/72	6/19/67	Caseworker
Steven Goldberg	White	Office of Education	9/5/72	9/5/72	Supv. HRS
Heloys J. McKinney	Black	C.S.S.	9/5/72	5/20/68	Case Aide
A. Reede Jr.	Black	Dept. of Employment	8/26/72	10/9/67	Sr. HRS
Marcia S. Singer	White	S.S.C.	8/21/72	12/27/71	Prog. Rsc. Anly. I.
Susan Sandler	White	Dept. of Employment	8/21/72	10/14/68	HRS
Patricia A. Cunningham	White	S.S.C.	8/14/72	5/10/65	Soc. Inv. Tr.
F.W. Smith	Black	Dept. of Employment	8/7/72	8/11/69	Sr. HRS
Lasandra Davis	Black	A.C.D.	7/31/72	7/31/72	Supv. HRS
S. Hochman	White	S.S.C.	7/31/72	7/1/71	Sr. HRS
C.K. Falk	White	Policy Planning	7/24/72	8/10/70	Sr. HRS
Laura Jacoby	White	C.D.A.	7/24/72	4/25/66	Sr. Clerk

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRA	TITLE OF FIRST APPT.
S. Wullinger	White	Dept. of Employment	7/10/72	12/20/69	Coord. MDP
David Osterman	White	Dept. of Employment	7/10/72	7/10/72	Supv. [illegible]
R.A. Ferguson	Black	C.D.A.	7/10/72	7/10/72	Supv. HRS
Anita R. Caminez	White	Personnel	7/10/72	2/13/69	Personnel Trans. T...
Beverly Chandler	Black	C.D.A.	6/28/72	11/16/70	Admin.Asst.(Spec)
A. Wolinsky	White	C.A.F.	6/26/72	6/17/68	Sr. HRS
Reuben Dobbis	White	C.D.A.	6/26/72	6/29/70	HRS-(P)
M.W. White	Black	C.A.F.	6/26/72	6/26/72	Supv. HRS
Stephen Price	White	Family Planning	6/26/72	6/26/72	Supv. HRS
G. Diaz	Hispanic	Dept. of Employment	6/19/72	6/69-12/23/70	Sr. HRS (MDT) (P)
Benjamin Garcia	Hispanic	C.D.A.	6/19/72	(2/20/67 (7/1/67	Consultant) Sr. HRS)
Iona Pressly	Black	Dept. of Employment	6/19/72	1/9/68	HRS
Robert J. Howell	Black	Personnel	6/5/72	10/23/67	HRS
Yolanda Garcia	Hispanic	C.D.A.	6/5/72	12/15/69	HRS (P)
Julia Jorge	Hispanic	C.D.A.	5/27/72	4/1/69	Sr. HRT

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRA	TITLE OF FIRST APPT.
D. Gabriel	White	C.D.A.	5/22/72	7/1/70	HRS
Edna Bowen	Black	A.C.D.	5/15/72	7/8/68	HRS
Alan Ramie	White	Mayor's Office	5/15/72	5/8/70	SUPV. HRS
Colin D. Pull	Black	A.C.D.	5/15/72	9/26/66	CASEWORKER I (P)
John Marshall	Black	Dept. of Employment	5/8/72	12/20/70	Sr. HRS (MDT)
Joyce Clarke	Black	C.D.A.	5/1/72	8/11/69	HRS
Mildred Lowy	White	Executive Offices	5/1/72	7/13/70	Supv. HRS
Steven Krause	White	Y.S.A.	5/1/72	5/6/68	HRS
Louise Steiner	White	Office of Education	5/1/72	5/4/70	Sr. HRS
D.E. Brock	Black	Dept. of Employment	4/24/72	4/22/68	Supv. Steno
R. Leotta	White	Dept. of Employment	4/24/72	4/10/72	Supv. HRS
Earl Weber	Black	Public Affairs	4/24/72	2/26/68	Sr. HRS
Janice R. Harth	White	A.C.D.	4/19/72	4/19/72	Supv. HRS
W. Craig	White	Policy Planning	4/17/72	6/2/69	HRS
Jared Lebow	White	Public Affairs	4/12/72	4/12/72	Supv. HRS

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1972

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FORMER APPOINTED TO HRS	TITLE OF FIRST APPT.
S. Russo	WHITE	C.A.F.	4/10/72	11/4/ 8	Sr. HRS
M. Ristorucci	HISPANIC	C.D.A.	4/3/72	12/1 '67	HRS
Mary Slote	WHITE	A.C.D.	4/3/72	4/3/	Supv. HRS
Ismael Quiles	HISPANIC	C.A.F.	3/27/72	12/16/ 9	Sr. HRS
Angel Ramos	HISPANIC	C.A.F.	3/27/72	11/1 '69	HRS
Roosevelt Marshall	BLACK	Administrative Servs.	3/27/72	10/2 '69	Sr. Clerk
N.J. Brown	BLACK	C.D.A.	3/27/72	1/9/6	HRS
David Quijano	HISPANIC	C.D.A.	3/20/72	3/20/ 2	Supv. HRS
Lois Shearer	WHITE	C.D.A.	3/20/72	5/25/ 0	Sr. HRS
L.P. Castaldo	WHITE	Mayor's Office	3/20/72	3/30/ 0	St. Cl. Wkr.
Daniel Stolper	WHITE	S.S.C.	3/20/72	3/20/ 2	Supv. HRS
Dolores Kazanjian	WHITE	A.C.D.	3/17/72	3/17/72	Supv. HRS
Ronald Smolin	WHITE	Public Affairs	3/16/72	2/26/ 8	Sr. HRS
Joseph F. Matthews	WHITE	Dept. of Employment	3/7/72	3/7/72	Supv. HRS

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRS	TITLE OF FIRST APPT.
Rosa Morales	Hispanic	A.C.D.	3/6/72	3/6/72	Supv. HRS
Ann Jones	BLACK	C.A.F.	3/3/72	8/7/68	Supv. Clerk
Harold Klinger	WHITE	Dept. of Employment	2/28/72	2/28/72	Supv. HRS
M. Jackson	WHITE	A.C.D.	2/22/72	12/1/69	HRS
Alice T. Cashman	WHITE	A.C.D.	2/22/72	2/26/72	Sr. HRS
Fred Evans Jr.	BLACK	C.D.A.	2/21/72	10/7/68	HRS
Carol O. Obleness	WHITE	Dept. of Employment	2/21/72	12/15/69	Sr. HRS
Mary J. Eccles	BLACK	A.C.D.	2/19/72	7/14/69	Supv. HRS
R. Senese	WHITE	Dept. of Employment	2/7/72	2/7/72	Supv. HRS
Patricia Power	WHITE	Res. Mob. & Planning	1/31/72	7/1/67	Supv. Clerk
Muriel Ollivierre	BLACK	E.E.A.	1/24/72	1/24/72	Supv. HRS
Allen J. Coates	BLACK	A.C.D.	1/24/72	4/25/69	Children's Counselor
Byrna Taubman		O.M.C.	1/17/72	1/17/72	Supv. HRS
Harry M. Dunbar	BLACK	A.C.D.	1/10/72	1/10/72	Sr. HRS

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO NYC	TITLE OF FIRST APPT.
Donna Kirschneimer	WHITE	Policy Planning	1/10/72	1/10/72	Supv. HRS
S.B. Pass	WHITE	CAMPS	1/3/72	1/3/72	Supv. HRS
S. White	BLACK	C.A.F.	1/1/72	7/15/68	Supv. HRS
J.A. Noriega	HISPANIC	C.D.A.	1/1/72	1/16/69	Sr. HRS
V.A. Purcell	WHITE	C.D.A.	12/27/71	12/27/71	Supv. HRS
Betty Brout	WHITE	A.C.D.	12/27/71	12/27/71	Supv. HRS
Nereida Klok	HISPANIC	A.C.D.	12/27/71	12/28/70	Sr. HRS-MDT
Andrew Jackson	BLCAK	A.C.D.	12/27/71	11/14/68	Supv. Clerk
Charlotte Jefferson	BLACK	A.C.D.	12/27/71	12/2?/69	Sr. HRS
Eunice C. Collymore	BLACK	A.C.D.	12/27/71	5/1/67	Supv. Steno
E. Lee Jr.	BLACK	Policy Planning	12/25/71	3/26/73	Supv. HRS
Victor Allen5	BLACK	Personnel	12/20/71	4/22/68	Sr. HRT
S. Greene		Policy Planning	12/13/71	12/13/71	Supv. HRS
M.E. Knight	BLACK	C.A.F.	11/15/71	11/15/71 12/30/67	Supv. HRS HRS
G.A. Costantino	WHITE	C.A.F.	10/24/71	8/12/68	Sr. HRS

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO H.R.A.	TITLE OF FIRST APPT.
A.M. Camacho	HISPANIC	C.D.A.	10/24/71	1/2/68	HRS
J. Lesch		S.S.C.	10/18/71	10/18/71	Supv. HRS
Epifanio Castello	HISPANIC	Office of Education	10/10/71	10/10/71	Supv. HRS
S.D. Salkow	WHITE	C.D.A.	9/20/71	7/14/69	Sr. HRS
J. Kuykendall	WHITE	Office of Education	9/13/71	9/13/71	Seat.Ac.Coor
Louis Durant	BLACK	A.C.D.	6/23/71	3/16/68	Supv. Clerk
A.S. Joyner	BLACK	C.D.A.	6/14/71	7/14/69	Sr. HRS
L. Kelly	BLACK	C.D.A.	5/31/71	10/23/67	Sr. HRT
W. Williams	BLACK	A.C.D.	5/17/71	1/3/67 7/1/67	Consultant Fam. Serv. Adv.
Beverly Griggsby	BLACK	Comm. Relations	5/17/71	5/17/71	Supv. HRS
James Jones	BLACK	Personnel	5/10/71	7/29/68	HRS
I.M. McCaffrey	WHITE	Y.S.A.	4/12/71	9/27/68	HRS
D.H. Springstein Jr.	BLACK	A.C.D.	3/22/71	3/22/71	Supv. HRS
Betty Johnson	BLACK	C.D.A.	3/8/71	3/8/71	Supv. HRS
Thomas Murry	WHITE	C.D.A.	3/6/71	7/14/69	Sr. HRS

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES 30, 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO HRS	TITLE OF FIRST APPT.
W.P. Murphy	WHITE	Administrative Servs.	2/16/71	7/20/67	Sr. HRS
G. Hemingway	BLACK	C.A.F.	11/9/70	11/9/70	Supv. HRS
J.J. O'Neill	WHITE	C.D.A.	10/26/70	10/26/70	Supv. HRS
S. Bartholomew	WHITE	Office of Review	10/15/70	10/20/69	Sr. HRS
F. Johnson	WHITE	Policy Planning	9/21/70	9/21/70	Supv. HRS
W. Coulter	WHITE	Training	9/16/70	7/1/70 9/16/70	Consultant Supv. HRS
Burt Gourdin	BLACK	C.D.A.	9/8/70	2/3/69	Sr. HRS
C.G. Hubbard	BLACK	Personnel	8/30/70	8/19/68	Sr. HRS
L. Jones	WHITE	Dept. of Employment	7/13/70	7/13/70	Supv. HRS
H.S. Huggins	BLACK	Policy Planning	7/13/70	7/13/70	Supv. HRS
M. Hurd	WHITE	A.C.D.	4/27/70	7/14/69	Sr. HRS
M.C. Wilmer	BLACK	Dept. of Employment	3/13/70	7/5/67	Sr. HRS
Carol Capizzi	WHITE	C.D.A.	2/23/70	11/25/68	Sr. HRS
Tweed Roosevelt	WHITE	Office of Review	1/18/70	12/23/68	Sr. HRS
C.L. Luna	WHITE	Mayor's Office	1/10/70	1/10/70	Supv. HRS

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Answer to Interrogatory 30, 31a, 31b

ANSWER TO INTERROGATORIES NO. 31a and 31b

PROVISIONAL SUPERVISING HUMAN RESOURCES SPECIALISTS
AS OF SEPTEMBER 1, 1973

NAME	RACE/ ETHNIC	AGENCY	DATE APPOINTED PROV SUPV. HRS	DATE FIRST APPOINTED TO DHR	TITLE OF FIRST APPT.
Javier Antompietri	HISPANIC	C.D.A.	1/1/70	11/25/68	Supv. HRS
R. Rust	WHITE	Dept. of Employment	10/6/69	7/1/67	HRS
William Dantchik	WHITE	Y.S.A.	3/3/69	3/3/69	Supv. HRS
J. Fannin	BLACK	A.C.D.	1/1/69	7/1/67	Sr. HRS
Geneva W. Cooper	BLACK	A.C.D.	11/20/68	2/14/67	Caseworker I
D.L. Hamer	WHITE	Policy Planning	11/4/68	3/13/67 7/1/67	Consultant (Fld. Eval.) HRS
G. N. Gray	BLACK	C.A.F.	7/22/68	7/22/68	Supv. HRS
N.E. Saunders	BLACK	Dept. of Employment	7/1/68	7/1/68	Supv. HRS
F.Dibennardo	WHITE	C.A.F.	6/29/68	7/1/67	Sr. HRS
F. Aran	HISPANIC	C.A.F.	4/16/68	4/16/68	Supv. HRS

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Answer to Interrogatory 30, 31a, 31b

Answer to Interrogatory 32

The attached table identifies each person who was notified in August or September 1973 of his or her permanent appointment to the level of Supervising Human Resources Specialist. These people would have, but for the courts temporary restraint order, assumed this position on September 14, 1973. The table includes the name, race or ethnic group, provisional status, agency, the score on the most recent eligible list, and the assignment as permanent Supervising Human Resources Specialist. For those persons who were provisional Supervising Humar Resources Specialists the assignment would have been the same as they had before the appointment. Those who were provisionals in titles higher than Supervising Human Resources Specialist or titles in other series with higher salaries were appointed as permanent Supervising Human Resources Specialists and placed on leave of absences. They also continued in their previous assignments.

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM
SUPERVISING HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PROV. STR. RES	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
C. Oblones	White	Yes	DOE	90.4	1 P	Same
H. Gourdin	Black	Yes	CDA	87.3	3 P	Same
D. Kazanjian	White	Yes	ACD	87	4 P	Same
C. Hubbard	Black	No	Personnel	85	5 P	Appt. LOA
G. Morris	Black	No	Training	85.9	6 P	Training
P. Tennell	Black	No	DOE	84.6	7 P	DOE
M. Oswald	White	No	DOE	83.6	8 P	DOE
L. Thomson	White	No	General Counsel	83.4	9 P	General Counsel
L. Sussmann	White	No	Fiscal	82.7	10 P	Appt. LOA
L. Simpson (Young)	Black	No	CDA	80.4	11 P	CDA
A. Chapman	White	Yes	ACD	80	12 P	Same
E. Lubetkin	White5	No	EHA	79.7	13 P	Appt. LOA
M. Berger	White	No	Resource Planning	79	14 P	Resource Planning
G. Graham	White	Yes	CDA	78	15 P	Same
[illegible] Jones	Hispanic	Yes	CDA	78.8	16 P	Same
M. Lechman	White	No	MCDA	78	17 P	DOE

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Answer to Interrogatory 32

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM
SUPERVISING HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PREV. EMPL. HERE	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
B. Michel	White	No	ACD	78.5	18 P	ACD
J. Fannin	Black	Yes	ACD	78.4	19 P	Same
A. Patton	Black	No	CDA	77.7	20 P	Appt. LOA
P. Lower	White	Yes	Resource Planning	77.3	21 P	Same
E. Owen	Black	Yes	ACD	76.9	23 P	Same
Z. Moscowe	White	No	Program Planning	76.4	24 P	Program Planning.
A. Felix	White	No	DOE	76.4	25 P	DOE
C. Benson Jr.	Black	No	Emergency Welfare Div.	76.1	26 P	Emergency Welfare Divisic
T. Weber	Black	Yes	C.D.A.	76.1	27 P	Same
R. Nash	White	Yes	MODA	75.3	29 P	Same
W. Weinman	White	No	Deputy Mayor's Off.	74.8	30 P	Appt. LOA
A. Mangino	Black	Yes	ACD	73.8	31 P	Same
M. Rotondi	Hispanic	No	DOE	71.4	32 P	DOE
P. Stothers	White	Yes	A.C.D.	87.3	1 P	Same
A Younger	White	No	Deputy Mayor's Off.	87.1	2 P	Appt. LOA
C. Rodriguez	Hispanic	Yes	ACD	85.2	3 P	Same
P. Camillo	Black	Yes	ACD	82.9	4 P	Same

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Answer to Interrogatory 32

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM SUPERVISING HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PROV. SUP. HRS	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
Sonja Lemidis	White	Yes	ACD	81.8	5 P	Same
D. Dorman	White	No	ACD	77.8	6 P	ACD
S. Konecki	White	No	ACD	76.9	7 P	ACD
S. Cone	White	No	ACD	76.7	8 P	ACD
C. Foote	White	Yes	ACD	76.3	9 P	Same
S. Sandler	White	Yes	DOE	78.1	10 P	Same
Donald W. Menzi	White	No	MAPC	94.5	1	Appt. LOA
Ronnie A. Ferguson	Black	Yes	CDA	91.5	4	Same
John J. Bernauer Jr.	White	Yes	Office of Education	91	5	Same
Rosalie H. Bernstein	White	No	OMC	90.9	6	Appt. LOA
Alfred Medeiros	Hispanic	No	CSS	90.7	7	SSA (PS)
Evelyn Nixon	Black	No	DOE	89.7	9	DOE
Mildred J. Lowy	White	Yes	Executive Offices	89.6	10	Same
Robert C. Menke Jr.	White	No	Management & Control	89.6	11	Management and Control
Charles E. Darcy	White	No	Income Maintenance	89.4	12	SSA
Stephen Price	White	Yes	Family Planning	88.8	15	Same
Mary E. Hagan	White	No	CDA	88.7	17	CDA

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM
SUPERVISING HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PROV. SUP. HRS	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
Mallayne J. McKinney	Black	Yes	CSS	88.3	19	Same
Joseph August	White	No	Training	88.2	20	Training
Robert Pam	White	No	CSS	87.8	22	DCD
Linda R. Wolf	White	Yes	DOE	87.5	25	Same
Gary Calnek	Black	No	Executive Offices	87.1	26	Appt. LOA
Linda Marino	Hispanic	No	SSC	86.9	28	SSC
John J. Hart Jr.	White	No	Contract Agency	86.7	29	Appt.LOA
Beverly L. Griggsby	Black	Yes	Comm. Relations	86.5	31	Same
Steven H. Rochman	White	Yes	SSC	86.4	32	Same
Suzanne R. Velazquez	Hispanic	No		86.4	33	DOE
Harold A. Burton	Black	No	CSS	86.2	35	Appt. LOA
Susan B. Pass	White	Yes	NAFC	86.1	37	Same
Jerome L. Kolker	White	No	DOE	86.1	38	Appt. LOA
Louise B. Steiner	White	Yes	Office of Education	86.1	39	Same
Carl R. Schneider	White	No	Fiscal	86.1	40	Fiscal
Charles P. Baroo	Other	No	DOE	86	42	DOE
Katherine P. Page	White	No	Resource Planning	86	43	Resource Planning

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM
SUPERVISING HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PROV. SUP. HRS	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
Ronald P. Smolin	White	Yes	Public Affairs	85.6	44	Same
Elizabeth Robbins	White	No	DOE	85.6	45	Appt. LOA
Daniel Stolper	White	Yes	SSC	85.6	47	Same
Hiram K. Grossman	White	No	SSC	85.5	48	Appt. LOA
Robert S. Call	White	No	Admin.Services	85.3	49	Appt. LOA
Linda B. Sitea	White	No		85.3	50]	-- SSA (PS)
Adolf Kleinberg	White	No	SSA	85.3	51	SSA
Shelton H. Allwood	Black	No	CDA	85.3	52	Appt. LOA
Reginn Feder	White	No	EEA	85.2	53	EEA
Thomas P. Murray	White	Yes	CDA	85.1	55	Same
Mary A. Zimmerman	White	No	ACD	85	56	SSA
Patricia V. Douglass	Black	Yes	ACD	85	57	Same
James V. Nathaniel	Black	No	ACD	84.9	58	Appt. LOA
Laurence Perlman	White	No	Income Maintenance	84.9	59	Appt. LOA
Bernard R. Glorman	White	No		84.9	60	MCDA
William C. Craig	White	Yes	Policy Planning	84.6	62	Same
Lawd Walbesters Jr.	Black	No	ACD	84.4	66	Appt. LOA

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Answer to Interrogatory 32

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM
SUPERVISORY HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PREV. EMP. HRS	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
Walter G. Goldsmith	White	No		84.3	67	SSA
Marilyn P. Robeson	White	No	ACD	84.3	68	Appt. LOA
Frederick Johnson	White	Yes	DCD	84.1	70	Same
Harold S. Klinger	White	Yes	DOE	84	71	Same
Barbara J. Comins	White	Yes	OMC	84	73	Same
Donald E. Hamer	White	No	DOE	84	74	Appt. LOA
Lenore Y. Schlossberg	White	No	CSS	83.9	78	SSA (PS)
Jerome G. Widroff	White	No	Income Maintenance	83.8	79	
[illegible] Pearl	White	No	DOE	83.8	81	DOE
[illegible] Boenning	White	No	SSA	83.7	84	SSA
Allen L. Finchoff	White	Yes	OMC	83.5	88	Same
Steven R. Goldberg	White	Yes	Office of Education	83.5	90	Same
Muriel M. Ollivierre	Black	Yes	EEA	83.5	91	Same
John O. Toolan	White	No		83.4	92	ACD
Joanne G. Lesch	White	Yes	SC	83.3	97	Same
Edward E. Kopp	White	No	Off. of Spec. Housing	83.2	98	Off. of Spec. Housing
Dor[illegible]y L. Schulz	White	No	Executive Offices	83.2	99	Appt. LOA

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM SUPERVISORY HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PREV. GOV. EMP. HRS	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
Patricia Cunningham	White	Yes	SSC	83.2	101	Same
Katherine Legg	White	No		83.2	101.5	Appt. LOA
Jeffrey M. Franklin	White	No	OMC	83.1	102	Appt. LOA
Vivian R. Manning	Black	No	CDA	83.1	103	CDA
Janice Harth	White	No	ACD	83	106	Appt. LOA
Mary A. Meratz	White	No	ACD	82.9	108	ACD
Victor M. Schor	White	No	OMC	82.8	109	Appt. LOA
Enrique Flores	Hispanic	No	Policy Planning	82.8	110	Appt. LOA
Harold F. McNeill	White	No	SSA	82.7	112	SSA
Marla Hochwitz	White	No	Off Staff	82.6	115	Appt. LOA
Dorothy D. Rinaldi	Hispanic	No	OMC	82.6	116	Appt. LOA
Lucy B. Winslow	White	Yes	Office of Education	82.5	117	Same
Beverly S. Mandel	White	No		82.3	119	Contract Agency Financing
Josephine Miller	White	No	ACD	82.2	121	ACD
John H. Black	White	No	CDA	82.1	122	CDA
Phyllis C. Mann	Black	No	Personnel	82.1	124	Appt. LOA
Mabel I. Marina	White	No	DOE	82	125	DOE

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM
SUPERVISORY HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PREV. FED. EMP.	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
John M. Ross	White	No	OMC	82	126	Appt. LOA
Marilyn G. Schiff	White	No	SSC	81.9	128	Appt. LOA
William J. Coulter	White	Yes	Training	81.9	130	Same
Edith E. Douglas	Black	No	ACD	81.8	133	ACD
Carole B. Steinbock	White	No	Res Sci.	81.7	134	Appt. LOA
Robert M. Greenblatt	White	No	Legal	81.3	138	Appt. LOA
Lillian V. Williams	Black	No	CAF	81.3	139	Contract Agency Finance
Marguerite Greenfield	White	Yes	Office of Education	81.2	141	Same
Hannah A. Achtenberg	White	No	SSA	81.1	144	Appt. LOA
Orville Phillips	Black	No	DOE	81	147	DOE
Elena A. Chernosky	White	Yes	Resource Planning	80.9	148	Same
Samuel Greene	Black	Yes	Policy and Planning	80.8	153	Same
Lois Chearer	White	Yes	CDA	80.8	154	Same
Betty L. Brout	Black	Yes	ACD	80.8	155	Same
Jared S. Lobow	White	No	Public Affairs	80.7	156	Public Affairs
Carolyn J. Cabell	White	Yes	OMC	80.7	159	Same
[illegible] M. Marton	White	Yes		80.6	163	Same

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM SUPERVISING HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PROV. SUP. HRS	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
John H. Allocca	White	No	BIM	80.6	164	Appt. LOA
Carmen A. Luciano	Hispanic	Yes	ACD	80.6	165	Same
Susan A. Kantor	White	No	ACD	80.5	168	ACD
Daniel B McMorrow	White	Yes	MAPC	80.5	169	Same
Mary Flood	Black	Yes	CDA	80.5	170.5	Same
Belle Horwitz	White	No	Mayor's Office	80.4	172	Appt. LOA
Roger C. Garcai	Hispanic	No	EDA	80.4	173	Appt. LOA
Joseph S. Altheimer	White	No	SSC	80.4	175	Appt. LOA
Daniel A. Gabriel	White	Yes	CDA	80.4	176	Same
Thomas M. Ohlson	White	Yes	Fiscal	79.9	188	Same
Susan M. Arroyo	Hispanic	No	DOE	79.9	189	DOE
Donna L. Kirchneimer	White	Yes	Policy Planning	79.8	190	Same
Thelma F. Little	Black	No	SSA	79.7	192	SSA
Judson G. Parker	Black	No	Resource Planning	79.6	193	Resource Planning
Vivian F. Dee		No		79.5	195	Appt. LOA
Michael R. Miller	White	No	Legal	79.4	199	Appt. LOA
George P. Cronin		No	BIM	79.3	201	Appt. LOA

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Answer to Interrogatory 32

ANSWER TO INTERROGATORY 32

PERSONS NOTIFIED OF APPOINTMENT FROM SUPERVISING HUMAN RESOURCES SPECIALIST LIST

NAME	RACE/ ETHNIC	WAS PREV. SUP. HRS	AGENCY	SCORE ON EXAM	POSITION ON LIST	ASSIGNMENT
James F. Warchefsky	White	No	SSC	79.3	202	Appt. LOA
Shannon M. Beirne	Black	No	ACD	79.3	203	ACD
Lori A. Trachtie	White	No	Adm. Services	79.3	204	Appt. LOA
Jane D. Kowal	White	No	CDA	79.2	205	CDA
John A. Peterson	White	Yes	Policy Planning	79.1	206	Same
Caron A. Smith	White	Yes	OMC	79.1	208	Same
Florence Wells	White	No	Personnel	79	209	Personnel
Kenneth A. Ribeiro	Hispanic	Yes	ACD	79	211	Same
Barbara Craig	White	Yes	CDA	78.8	216	Same

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Answer to Interrogatory 32

Defendants' First Interrogatories to Plaintiffs

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

M.E.L.

73 Civ. 3815

[CAPTION OMITTED]

To:

JEFFREY MINTZ, Esq.
10 Columbus Circle
New York, N.Y. 10019
Attorney for Plaintiffs

Defendants hereby request that plaintiffs James C. Jones, Gloria De Berry, Mary J. Eccles, Charlotte Jefferson, and Andrew P. Jackson answer the following written interrogatories under oath in accordance with Rule 33, Federal Rules of Civil Procedure. Said answers shall be filed within thirty (30) days after service hereof or such time as ordered by the Court. All interrogatories shall be deemed to be addressed to all of the plaintiffs and all answers thereto shall reflect the cumulative knowledge of all plaintiffs except as otherwise indicated.

1. Set forth the basis for the contention in paragraph 2(e)(iii) of the complaint that "the procedure under which defendants administer and grade the civil service examina-

tions, and establish eligibility lists based on them, is arbitrary, secretive, and subject to racially and ethnically discriminatory manipulation, falsification or abuse."

2. Set forth each and every fact in plaintiffs' possessions with regard to the contention that the procedures for administering and grading civil service examinations and establishing eligibility lists are arbitrary and secretive.

3. Set forth each and every fact in plaintiffs' possession with regard to the contention that eligible lists are subject to racially and ethnically discriminatory manipulation, falsification, or abuse.

4. Do plaintiffs contend that any eligible lists have been manipulated, falsified, or abused in a racially and ethnically discriminatory manner?

5. If the answer to Interrogatory 4a is in the affirmative,

a) state each and every fact in plaintiffs' possession with regard to the above contention;

b) list the eligible lists by number and position;

c) name the person or persons alleged to have so manipulated, falsified, or abused such eligible lists.

6. Do plaintiffs contend that the procedures by which Exam Nos. 1631 and 2013 were compiled, advertised, administered, graded and their scores and pursuant ranking of eligibles compiled and published differ from the proce-

dures followed for civil service examinations referred to in paragraph 2(e)(iii) of the complaint?

7. If the answer to Interrogatory 6 is in the affirmative,

a) describe the differences in detail with respect to each step in the procedure as set forth in paragraph 6 of the interrogatories.

8. Describe in detail the ways in which the eligible lists established pursuant to Exam Nos. 1631 and 2013 are easily racially and ethnically manipulated.

9. Do plaintiffs contend that the eligible lists established pursuant to Exam Nos. 1631 and 2013 were in fact racially and ethnically manipulated? If they so contend, state each and every fact in plaintiffs' possession with regard to the contention.

10. Do plaintiffs contend that defendants discriminated against them intentionally? If they so contend, set forth each and every fact in plaintiffs' possession with regard to this contention; and describe in detail each such fact or incident.

11. Do plaintiffs contend that the procedures by which they were assigned as supervising Human Resources Specialists (hereafter "Sup HRS") were racially and ethnically manipulated, falsified, or abused?

12. If the answer to Interrogatory 11 is in the affirmative, set forth each and every fact in plaintiffs' possession with regard to this contention; describe in detail each such fact or incident.

13. For each of the named plaintiffs, set forth the following information:

i) the names and locations of each elementary and high school attended;

ii) the names and locations of each college attended; the years attended; the degree received; the year of graduation;

iii) the names and locations of each graduate school attended; the years attended; the degree program or course or study; the degree awarded; and the year.

14. For plaintiffs Jones, De Berry, Eccles, and Jefferson:

i) list the constituent agencies of HRS where they were employed as permanent Senior Human Resource Specialists.

ii) Describe their job duties as permanent Senior HRS Specialists.

iii) Give in detail examples of their typical tasks in their positions of Senior HRS Specialist.

15. For plaintiff Andrew P. Jackson:

i) Describe the job duties and give examples of typical tasks of his position as provisional Sup Human Resources Specialist.

ii) Did plaintiff Jackson take examination No. 7112 for Senior Human Resources Specialist given on or about

December 13, 1969? If he took that written examination, did he pass the written test; and if so, what was his score? If he failed the written test, what was his score?

iii) Describe the job duties and give examples of typical tasks of his position as provisional Senior Human Resources Specialist.

iv) Did plaintiff Jackson take Exam No. 1099 for Senior Human Resources Specialist given on October 14, 1972? If so, what was his score on the written test?

16. For plaintiff Gloria De Berry:

i) Did she take Exam No. 2012 for Sup's HRS (MDT) given on or about October 14, 1973?

ii) Does plaintiff De Berry contend that she was eligible to take Exam No. 2012 based on the minimum requirements set forth in the Notice of Examination for Exam No. 2012?

iii) If she contends that she was set forth the facts with regard to contention.

17. Do plaintiffs contend that when they were assigned as provisional Sup HRS's, they were in fact assigned to occupational disciplines or parentheticals as those phrases are used in paragraph 4a of the second affidavit of James Jones sworn to on September 11, 1973?

18. If the answer to Interrogatory No. 17 is in the affirmative, list for each of the named plaintiffs the occupational disciplines or parentheticals to which they were assigned.

Defendants' First Interrogatories to Plaintiffs

19. If the answer to Interrogatory No. 17 is in the negative, to which occupational disciplines or parentheticals do plaintiffs contend they were assigned when they were assigned as provisional Sup HRS's?

20. How many planning sessions between HRA and NYC Department of Personnel did plaintiff Jones attend? On what dates did he attend? List all persons who were present at such planning sessions and their agencies.

21. If plaintiff Jones will do so without a separate request for production of documents, produce any records, notes, reports, memoranda, correspondence or other document in his possession, if any, relating to the planning sessions described in paragraph 4a of his affidavit sworn to on September 11, 1973.

22. Set forth the basis for the contention of plaintiff Jones that "it was and is the practice of the agency to hire and assign provisionals according to these occupational disciplines although the titles at which these provisionals are paid is simply supervising HRS".

23. Set forth each and every fact in plaintiffs' possession with regard to the contention of plaintiff Jones as stated in paragraph 20 of these interrogatories and state,

a) the source of such knowledge and

b) the approximate date the practice began and the circumstances giving rise to such practice.

24. Does plaintiff Jones contend that the practice of the agency was followed when plaintiffs De Berry, Eccles,

Jefferson and Jackson were assigned as provisional supervisors?

25. If the answer to Interrogatory 24 is in the affirmative, to what occupational disciplines does plaintiff Jones contend that plaintiff De Berry, Eccles, Jefferson and Jackson were assigned?

26. If the answer to Interrogatory 24 is in the negative, to what occupational disciplines does plaintiff Jones contend that plaintiffs De Berry, Eccles, Jefferson and Jackson were assigned?

27. For any 5 members of plaintiffs' alleged class who are not named plaintiffs, and who failed Exam. No. 1631, provide the following information:

i) Names of such plaintiffs and agency where employed.

ii) For each individual so named, a description of their job duties and examples of typical tasks in their positions as provisional Sup. HRS.

28. Identify each person whom plaintiffs expect to call as an expert witness at trial; state the subject matter on which the expert is expected to testify; state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Respectfully submitted,

NORMAN REDLICH
Corporation Counsel
Attorney for Defendants

By PAULA J. OMANSKY

Answers to Defendants' Request for Interrogatories

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

In Answer to Defendants Interrogatories filed December 4, Plaintiffs hereby state as follows:

1. Paragraph 2 (a) (iii) of the Complaint is not in fact an allegation of fact by the Plaintiffs but rather a statement of a common question of fact relevant to all members of the class. Plaintiffs at this time lack sufficient information to establish this factual question.

2. On the basis of information supplied by the Defendants in response to Plaintiffs' Interrogatories and the deposition taken of two of Defendants' agents, it is clear that the manner of test development up until the time the test is in fact given is highly secretive. Further, it is alleged that the test results are arbitrary on the basis of the fact that the performance of Blacks and Hispanics is widely disparate from that of Whites and additionally the fact that persons successfully performing the job in a provisional capacity are alleged to be incapable of performing the job on the basis of their test performance.

3. In response to Interrogatory 3, we do not contend that the eligible lists per se are discriminatory manipulated.

However, the eligibility lists are the product of examinations which are in themselves racially and ethnically discriminatory and not related to successful performance of the job.

4. See Answer to Interrogatory 3.

5. Not Applicable.

6. No.

7. Not applicable.

8. The eligible lists for the examinations in question were in fact racially and ethnically manipulated by the setting of a cut off score at a level higher than necessary to establish ability to perform the job, if indeed ability to perform the job could in any way be predicted by virtue of these examinations.

9. See Answer to Interrogatory 8.

10. We do not contend that the Defendants had an express intention to discriminate against Blacks and Hispanics. However, we do contend that the manner in which Defendants and their agents developed the examinations in question was without regard to the relevant professional and legal standards and therefore showed a high level of disregard for the rights of Plaintiffs and their class.

11. Plaintiffs do not contend that the manner and procedures by which they received appoint as Provisional Supervising Human Resources Specialists was racially or ethnically discriminatory. This response does not relate in

any way to actions taken subsequently to Plaintiffs' appointments as Provisionals including specifically, but not limited to, the examinations in issue here.

12. Not applicable.

13. With respect to Plaintiff, James C. Jones, the following is set forth:

(i) Tift Elementary School, Albany, Georgia. Munroe High School, Albany, Georgia.

(ii) Albany State College, September, 1961 to December, 1961.
Morehouse College, January 1972 to June, 1973.
City College of New York, January, 1967 to June 1970, Bachelor of Arts Degree.

(iii) St. Johns University School of Law, 1970 to present; Fourth Year Law Student.

With respect to Plaintiff, Andrew Jackson;

(i) P. S. 127, Queens, New York.
Forest Hills High School, Queens, New York.

(ii) Florida State University, May 1965 to June 1966, Tyndall Air Force Base, Florida.
Bernard Baruch College, September 1969 through June, 1971.

With respect to Plaintiff, Gloria DeBerry;

(i) Riley Elementary School, Stanaford, West Virginia
Stratton High School, Beckley, West Virginia

(ii) West Virginia State College, 1958 through 1962 and 1964 through 1965, B.S.

With respect to Plaintiff, Mary Eccles;

(i) Whittier Elementary School, High Point, North Carolina
William Penn High School, High Point, North Carolina

(ii) Virginia State College, 1948 to 1952, Bachelor of Arts.

(iii) Columbia Graduate School of Social Work, 1956 and 1967 through 1969, Masters Degree in Social Work.

With respect to Charlotte Jefferson;

(i) Lincoln Elementary School, Bristol, Tennessee
John F. Slater High School, Bristol, Tennessee

(ii) Stillman College, Tuscaloosa, Alabama, 1953 through 1957, Bachelor of Arts Degree.

(iii) Training Courses at Columbia University Graduate School of Social Work.

14. With respect to Plaintiff, Jones, the information sought is essentially set forth in an Affidavit previously submitted by said Plaintiff and sworn to on September 11, 1973, along with the Exhibits annexed thereto.

With respect to Plaintiff, DeBerry, the information sought is essentially set forth in an Affidavit previously submitted by said Plaintiff, sworn to on September 11, 1973.

With respect to Plaintiff, Eccles, the information requested is essentially contained in an Affidavit and Exhibits annexed thereto, said Affidavit having been sworn to on September 11, 1973.

With respect to Plaintiff, Jefferson, the following is set forth:

(i) Plaintiff was employed as a Permanent Senior Human Resources Specialist assigned directly to the Human Resources Administration.

(ii)–(iii) Plaintiff's duties as a Permanent Senior H.R.S. Specialist consisted, among other things, of planning services for teenage families in Manhattan and the Bronx; planning, conferences, consultations, and the like with the New York City Board of Education, the New York City Department of Health, other public and private agencies, and community groups in connection with services for teenage families, health programs, day care centers, social services and other supportive services for teenage families.

15. Plaintiff, Jackson, sets forth the following information:

(i) As a Provisional Supervising Human Resources Specialist, Plaintiff is Coordinator of Personnel for the Agency for Child Development. He is responsible for processing of all personnel actions from the hiring through termination of staff; maintenance of all personnel records, manning tables, files, position control cards, timekeeping

records, and other personnel records of the Agency; conferences with the Office of the Commissioner, the Department of Personnel, The Bureau of Budget and other City Agencies with respect to personnel problems and policies for the Agency for Child Development.

(ii) Plaintiff, Jackson, received a score of 55 on examination No. 7112.

(iii) As Provisional Senior Human Resources Specialist, Plaintiff, Jackson, was Assistant Coordinator of Personnel processing with responsibility for personnel processing for H.R.A., M.C.D.A., C.D.A. and Y.S.A. Many of the specific job duties are essentially the same as the duties set forth under subdivision (i) above.

(iv) To be provided.

16. (i) No.

(ii) Yes.

17. Plaintiffs do contend that their assignments as Provisional Sup. H.R.S.'s were with respect to occupational disciplines or parenthicals.

18. The occupational disciplines or parenthicals to which Plaintiffs were assigned is as follows:

Jones—Management (mgt.)
Jackson—Management (mgt.)
Eccles—Community Program Development (C.P.D.)
Jefferson—Management (mgt.)
DeBerry—Management (mgt.)

Answers to Defendants' Request for Interrogatories

19. Not applicable.

20. Plaintiff, Jones, attended planning sessions between H.R.A. and The New York City Department of Personnel. However, he does not, at this time, recall the precise dates of such sessions, nor does he recall the names of all persons who were present at such planning sessions and their agencies.

21. Plaintiff, Jones does not have such documents or other papers as requested hereunder.

22. The basis for the contention of Plaintiff, Jones hereunder is his personal knowledge arising from his duties as Chief of Personnel Processing and Control.

23. Plaintiffs are unable to determine what information Defendants seek hereunder.

24. Yes.

25. See Answer to Interrogatory 18.

26. Not applicable.

27. To be provided.

28. If Plaintiffs call an expert witness at the trial that person is expected to be Dr. Felix Lopz. At this time Plaintiffs do not anticipate calling any expert witnesses in the course of their case in chief. If Dr. Lopez is called it will be as a rebuttal witness to respond to any defense presented

by the Defendants on the subject of job relatedness to the subject examinations. Plaintiffs do not at this time know the nature of the defense that will be presented and they are unable to state the substance of the testimony of the expert.

Dated: New York, New York
January 11, 1974

JAMES C. JONES
ANDREW JACKSON
GLORIA DEBERRY
MARY J. ECCLES
CHARLOTTE JEFFERSON

Summons in *Dorothy Williams, et al.*

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 74 Civ. 91

DOROTHY WILLIAMS, JOHN GOYCO and JOHNNIE MCCOY, each individually and on behalf of all others similarly situated,

Plaintiffs,

—against—

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION; JULE M. SUGARMAN, individually and in his capacity as Administrator of the NEW YORK CITY ADMINISTRATION; THE NEW YORK CITY DEPARTMENT OF PERSONNEL; THE NEW YORK CITY CIVIL SERVICE COMMISSION, HARRY I. BRONSTEIN, individually and in his capacities as Director of the NEW YORK CITY DEPARTMENT OF PERSONNEL and Chairman of THE NEW YORK CITY CIVIL SERVICE COMMISSION, Plaintiff; and JAMES W. SMITH and DAVID STALTMAUER, each individually and in his capacity as Civil Service Commissioner,

Defendants.

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon Covington, Howard, Hagood & Holland and Jeffery L.

Mintz, plaintiff's attorneys, whose addresses are, respectively, 15 Columbus Circle, New York, New York and 10 Columbus Circle, New York, New York, an answer to the complaint which is herewith served upon you, within ..... days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

.....

Clerk of Court.

.....

Deputy Clerk.

[Seal of Court]

Date:

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Complaint in *Dorothy Williams, et al.*

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

I. *Jurisdiction*

1. This proceeding is brought under (1) 42 U.S.C. §1981, providing for the equal rights of all persons within the jurisdiction of the United States; (2) 42 U.S.C. § 1983, providing for the right of civil action to redress deprivation under color of any state statute, ordinance, regulation, custom or usage of rights, privileges or immunities secured by the Constitution and Laws, and (3) the Fifth and Fourteenth Amendments to the United States Constitution, protecting all persons against denial of due process of law by the States and their agencies and securing to all persons the equal protection of the laws. In this action, Plaintiffs seek to redress and enjoin violations of those provisions of the Constitution and laws of the United States. Plaintiffs also seek a declaratory judgment pursuant to 28 U.S.C. §2201. This Court has jurisdiction under 28 U.S.C. §§1343 (3) and (4).

II. *Class Action Allegations*

2. (a) Plaintiffs bring this action as a class action maintainable under Rule 23 (b) (1) and (2), Federal Rules of Civil Procedure;

(b) The class includes all persons similarly situated to the named Plaintiffs, to wit:

(i) All Black or Hispanic persons presently employed by the New York City Human Resources Administration who took an examination entitled "Open Competitive Examination for Senior Human Resources Specialist No. 1099 (hereinafter "Exam No. 1099") given by the City of New York Department of Personnel, for permanent appointment to the position of Senior Human Resources Specialist, but by virtue of their failing to attain a score of 70 or above on that examination are not eligible for, or will not be appointed to the Senior Human Resources Specialist position.

(ii) All Black or Hispanic persons presently employed by the New York City Human Resources Administration who took an Examination entitled "Promotion to Senior Human Resources Specialist Examination No. 1626" (hereinafter "Exam No. 1626") given by the City of New York Department of Personnel, for permanent appointment to the position of Senior Human Resources Specialist, but by virtue of their failing to attain a score of 70 or above on the examination, are not eligible for, or will not be appointed to, the Senior Human Resources Specialist position; and

(iii) All Black or Hispanic persons who took both Examination No. 1626 and Exam No. 1099 and by virtue

of their failing to attain a score of 70 or above on the examinations are not eligible for, or will not be appointed to the Senior Human Resources Specialist position; and

(iv) All Black or Hispanic persons presently employed by the New York City Human Resources Administration who took an examination entitled "Open Competitive Examination for Human Resources Specialist No. 1097" (hereinafter "Exam No. 1097") given by the City of New York Department of Personnel, for permanent appointment to the position of Human Resources Specialist, but by virtue of their failing to attain a score of 70 or above on that examination are not eligible for, or will not be appointed to the Human Resources Specialist position.

(c) The class as defined above includes additional persons whose number is presently unknown (vi), (vii) and (viii), thereby making the class so numerous that joinder of all members is impracticable.

(d) The named Plaintiffs are fully representative members of the class and will fairly and adequately protect class member's interest. Therefore, as more fully set forth below, Blacks and Hispanics, who have taken the examinations here challenged and failed to pass them, and who are now in imminent danger of losing present positions of Provisional Senior Human Resources Specialists, and Provisional Human Resources Specialists, all as a result of appointments based on the examinations.

(e) The questions of fact common to the class include:

(i) Whether the civil service examinations on which permanent promotion or appointment to Senior Human Resources Specialist (Exams 1099 and 1626), and Human Resources Specialist (Exam 1097) have the effect of disproportionately screening out Black and Hispanic applicants?

(ii) Whether examinations Nos. 1099, 1626 and 1097 are significantly job related?

(iii) Whether the procedure under which Defendants administer and grade the civil service examinations, and establish eligibility lists based on them, is arbitrary, secretive, and subject to racially and ethnically discriminatory manipulation, falsification, or abuse?

(f) The questions of law common to the class include:

(i) Whether Defendants' examinations Nos. 1099, 1626, and 1097 are unlawful, in that they disproportionately screen out Black and Hispanic persons, and are not and could not be shown to be valid or job related?

(ii) Whether appointments from the eligibility lists promulgated pursuant to examinations Nos. 1099, 1626 and 1097 would or will violate the rights of Black and Hispanic persons protected by the Constitution and laws?

(iii) Whether the arbitrary, secretive, and easily manipulate system of developing and scoring examina-

tions and ranking eligibles violates, or tends to violate, the due process and equal protection rights of Black and Hispanic applicants for Senior Human Resources Specialist positions and Human Resources Specialist positions?

(iv) The nature of appropriate injunctive and affirmative relief from Defendants' unlawful practices and their effects.

III. *The Plaintiffs*

3. Plaintiff, John Goyco is a Puerto Rican resident of the State of New York. He was first employed by HRA in 1967 as a Provisional Human Resources Specialist. He continues to hold this position and his performance in all his duties at HRA has, at all times, been satisfactory. On October 14, 1972 he took Exam 1097 and in November, 1973 was notified that he had failed the examination.

Plaintiff, Goyco's position as a Provisional Human Resources Specialist is immine. tly in jeopardy as a result of his performance on the examination. When appointments are made from the eligibility list, his provisional position will be eliminated, and he will be subject to discharge from his employment.

4. Plaintiff, Johnnie McCoy is a Black resident of the State of New York. She was first employed by HRA in 1967. In 1969, she was appointed as Provisional Senior HRS. She continues to hold that position. Her performance in all of her duties at HRA has, at all times, been

satisfactory. On October 14, 1972, she took examination No. 1626 and in November 1973, she was notified that she had failed the examination.

Plaintiff McCoy's position as a Provisional Senior HRS is imminently in jeopardy as a result of her performance on the examination. When appointments are made from the eligibility list, her provisional position will be eliminated, and she will be demoted to a position of significantly less responsibility and pay except to the extent that she may be allowed to hold the position of someone on leave of absence.

5. Plaintiff, Dorothy Williams is a Black resident of the State of New York. She was first appointed by HRA in 1967, as a Provisional Human Resources Specialist. In June, 1970, she was appointed a Provisional Senior Human Resources Specialist. She continues to hold that position. Her performance in all jobs at HRA has been satisfactory. On October 14, 1972, she took examination No. 1099 and in November, 1973, she was notified that she had failed the examination.

Plaintiff Williams' position as a Provisional Senior HRS is imminently in jeopardy as a result of her performance on the examination. When appointments are made from the eligibility list, her provisional position will be eliminated and she will be demoted to a position with significantly less responsibility and pay, except to the extent that she might be allowed to hold the position of someone on leave of absence.

IV. *Defendants*

6. Defendant the New York City Human Resources Administration is a super agency with the responsibility for planning, initiating, supervising, coordinating, reviewing and evaluating City programs and activities in the "Attack on Poverty" including the areas of community action and development, manpower and career development, social and youth services, public assistance and addiction services. It has offices at 250 Church Street, New York, New York 10013 and was established by Executive Order No. 28 on August 15, 1966.

7. Defendant Jule M. Sugarman is a resident of the City and State of New York. He is administrator of HRA and has chief responsibility for the conduct of its affairs.

8. The Defendant New York City Department of Personnel is, *inter alia,* responsible for recruiting personnel to staff city agencies; making studies and recommendations to the City Civil Service Commission for the grading and classifying of positions in the civil service; scheduling and conducting examinations; establishing, promulgating and certifying eligible lists, and investigating applicants for positions in the civil service. The Department of Personnel has offices at 220 Church Street, New York, New York 10013.

9. Defendant The New York City Civil Service Commission functions, *inter alia,* as a quasi-legislative body in the enactment of rules and regulations governing the civil

service system; classifies all civil service positions, and orders examinations and acts as "guardian of the city's merit system."

10. Defendant Harry I. Bronstein is a resident of the City and State of New York. He is a City Personnel Director and Chairman of the City Civil Service Commission and has principal responsibility for the conduct of their affairs.

11. James W. Smith and David Stadtmauer are each members of the Civil Service Commission and share responsibility for the conduct of its affairs.

12. In order to qualify for the position of Senior Human Resources Specialist in HRA, an applicant must, *at a minimum,* either qualify to take exam No. 1626 and pass such examination or qualify to take exam No. 1099 and pass such examination; 70 is the passing score for both exams. In order to qualify for the position of Human Resources Specialist in HRA an applicant must, *at a minimum,* either qualify to take exam. No. 1097 and pass such examination, or qualify to take another examination not an issue here; 70 is the passing score for both exams.

13. All of the said examinations, Nos. 1099, 1626 and 1097, operated to screen out a disproportionate percentage of Black and Hispanic applicants. The percentage of Whites who pass each examination is approximately two, three, and four times as great as the percentage of Black or Hispanic applicants who passed each examination.

14. Exams Nos. 1099 and 1626 have had direct impact on the racial and ethnic makeup of the imminent permanent appointments to the position of Senior HRS. Upon information and belief, Defendants intend to appoint many times as many Whites to the position of Senior HRS as Blacks and Hispanics, pursuant to the eligibility list based on said examinations.

15. Exam No. 1097 has had direct impact on the racial and ethnic makeup of the imminent permanent appointments to the position of Human Resources Specialist. Upon information and belief, Defendants intend to appoint many times as many Whites to the position of Human Resources Specialist as Blacks and Hispanics, pursuant to the eligibility list based on Exam No. 1097.

16. All such appointments will have the effect of perpetuating the current disproportion of Whites to Blacks and Hispanics in the permanent Senior HRS, and HRS positions, and will reverse the trend toward equality of opportunity in those positions which has been fostered by the provisional appointments of qualified Black and Hispanic persons to those positions.

17. None of the examinations in question, to wit, Exams Nos. 1626, 1099 and 1097 bear a demonstrative relationship to successful performance of the job to which the respective examinations are allegedly directed.

18. Upon making permanent appointments to the positions of Senior HRS and HRS, all provisional appointments will be terminated. The net effect of the permanent

appointments and termination of the provisional appointment and termination of the provisional appointments will be to displace Blacks and Hispanics who have been satisfactorily performing the jobs of Senior HRS and HRS with Whites who have passed the Examinations Nos. 1626, 1099 and 1097.

19. The procedures by which Exam Nos. 1626, 1099 and 1097 were compiled, advertised, administered, graded, and their scores and pursuant ranking of eligibles compiled and published are arbitrary, secretive and easily racially and ethnically manipulated.

V. *Irreparable Injury*

20. The appointment of any substantial number of Senior Human Resources Specialists and Human Resources Specialists from the eligible lists promulgated would result in the displacement of the named Plaintiffs, and other Black and Hispanic Provisional Senior Human Resources Specialists and Human Resources Specialists from their current positions. These class members would then, therefore, be immediately relegated to positions inferior in responsibility, desirability and pay to their present positions.

21. In the past, Defendants have administered examinations and made appointments to the Senior Human Resources position and the Human Resources Specialist position approximately once every three years. Based upon this pattern, upon information and belief, class members

excluded from the position of Senior HRS and from the position of Human Resources Specialist, pursuant to the existing eligibility lists, will not have another opportunity to seek appointments for a like period of years.

VI. *Violations of Law*

22. The acts, practices, and policies described above, relating to the formulation, administration, and usage of civil service examination Nos. 1626, 1099 and 1097 and to appointments made or to be made pursuant to those examinations, violate the federal rights of Plaintiffs and members of the class they represent. Said rights are secured to Plaintiffs and members of the class by 42 U.S.C. §§ 1981, 1983 and by the due process and equal protection provisions of the Fifth and Fourteenth Amendments to the United States Constitution.

VII. *Need for Relief*

23. Plaintiffs and the class they represent have no adequate remedy at law. They have suffered and are continuing to suffer irreparable injury as a result of Defendants' reliance upon examinations which discriminate on the basis of race and ethnic background. These discriminatory acts, practices, and policies will continue to injure Plaintiffs and class members in the manner described above, unless and until this Court grants the preliminary and permanent relief requested by Plaintiffs. Indeed, appoints to Senior HRS positions, and Human Resources Specialist positions based on the discrimina-

torily formulated eligible lists will be made immediately unless the Court enjoins the Defendants from such action.

VIII. *Prayer for Relief*

WHEREFORE, Plaintiffs, on behalf of themselves and the class they represent, request that this Court grant them the following relief:

A. Enter a declaratory judgment declaring that the acts, practices, and policies of Defendants in formulating and administering Examination Nos. 1626 and 1099 for the position of Senior HRS, and Examination No. 1097, for the position of Human Resources Specialist, in establishing eligible lists based upon the results of said respective examinations, and in making appointments based on said eligible lists have deprived and continue to deprive the Plaintiffs and members of the class they represent of federal rights secured to them by 42 U.S.C. §§ 1981, 1983 and the Fifth and Fourteenth Amendments to the United States Constitution.

B. Enter a preliminary and permanent injunction enjoining the Defendants, their officers, agents, employees, and successors in office from acting upon the results of any civil service examination for the positions of Senior HRS and Human Resources Specialist, which has not first been property demonstrated to be valid and significantly related to the respective positions.

C. Enter a preliminary and permanent injunction enjoining the above named Defendants, their officers, agents,

employees and successors in office from making any permanent appointments to the positions of Senior HRS based on the results of Examinations numbered 1626 and 1099, and Human Resources Specialist based on the results of Examination numbered 1097 or any eligible list based on performance on those examinations unless and until the Defendants have first properly demonstrated that said examinations were valid and significantly related to performance on the respective jobs.

D. Enter a preliminary and permanent injunction enjoining the above named Defendants, their officers, agents, employees and successors in office from terminating or otherwise interfering with the provisional appointments of the named Plaintiffs and certain members of the class they represent, by reason of the permanent appointment of other persons to the positions of Senior HRS based on the results of examinations Nos. 1626 and 1099, and Human Resources Specialist based on the results of Examination numbered 1097, unless and until the Defendants have first properly demonstrated that said examinations were valid and significantly related to the job.

E. Enter a preliminary and permanent injunction enjoining Defendants, their officers, agents, employees, and successors in office from unlawfully discriminating, in any manner whatsoever, against Black and Hispanic persons and members of the class represented by Plaintiffs, with respect to appointments to the positions of Senior HRS and Human Resources Specialist.

F. Retain jurisdiction and require appropriate reporting as to the Defendants' compliance with the relief prayed for herein during a period of time sufficient to assure the elimination of all the discriminatory practices complained of and their ongoing effects.

G. Grant Plaintiffs and the class they represent such other and further equitable relief as may be appropriate, including costs and reasonable attorney's fees.

Respectfully submitted,

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Attorneys for Plaintiffs

Order of Judge Lasker in *Dorothy Williams, et al.*

IN
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

WHEREAS, this case came on before the Court on January 4, 1974 in the presence of Counsel for the Defendants, with Plaintiffs seeking a temporary restraining order restraining Defendants from making any permanent appointments to the positions of Senior Human Resources Specialist and Human Resources Specialist and from terminating or otherwise interfering with the provisional appointments of the named Plaintiffs and members of their class who are provisional Senior Human Resources Specialists and/or provisional Human Resources Specialists; and

WHEREAS, the Plaintiffs have submitted Affidavits and the parties, through their Counsel appeared before the Court to present oral argument on January 8, 1974, all of which has been considered; and

WHEREAS, it appearing to the Court that Defendants are about to make permanent appointments to the positions of Senior Human Resources Specialists and Human Resources Specialists on the basis of Examinations Nos. 1097, 1099 and 1626 and eligible lists promulgated pursuant to said Examinations, and that such action would tend to render a judgment herein ineffectual in that the now vacant positions of Senior Human Resources Specialists and Human Resources Specialists would be filled, and, it

appearing that Plaintiffs and members of their class would suffer immediate and irreparable injury, loss or damages unless the Defendants are restrained before trial can be had, to wit, Plaintiffs and members of their class will be demoted or discharged; and

WHEREAS, the Court has scheduled this matter for trial as soon as practicable, 1974; and

NOW, THEREFORE, it is hereby ORDERED that:

1. The Defendants are hereby temporarily restrained and preliminarily enjoined from taking any further steps to effectuate any permanent appointments to the positions of Senior Human Resources Specialist or Human Resources Specialist pending adjudication of the merits by the Court.

2. The Defendants are hereby temporarily restrained and preliminarily enjoined from hereafter terminating the provisional appointment of the Plaintiffs and other Blacks or Hispanics who are provisional Senior Human Resources Specialists or Human Resources Specialists in contemplation of or for purposes of replacement by permanent appointees from eligible lists Nos. 1097, 1099 and 1626, pending adjudication of the merits by the Court.

3. That this matter be set down for a continued hearing at the call of the court, 1974 when the factual issues raised by the pleadings and papers submitted herein may be fully presented by the parties.

.....

United States District Judge

Dated: New York, New York
January 9, 1974

Additional Stipulated Facts

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

[CAPTION OMITTED]

It is hereby further stipulated and agreed among the attorneys for the parties hereto that the witnesses, if called, would testify as follows:

PLAINTIFFS' WITNESSES

Dorothy Williams

If called to testify, Mrs. DOROTHY WILLIAMS, would testify as follows:

She is Black. She has been employed by the New York City Human Resources Administration since 1967. She has held the position of provisional Senior Human Resources Specialist since June, 1970. She took the Senior Human Resources Specialist open competitive examination No. 1099. In her opinion many of the questions on the examination were totally unrelated to the work performed by, or the knowledge required to perform the work of, a Senior Human Resources Specialist. She was notified on or about November 12, 1973 that she had received a "failing" grade on Examination No. 1099. As a result of her

failing grade she is precluded from being permanently appointed to the position of Senior Human Resources Specialist.

In December of 1969 she took and passed an open competitive examination for the position of Human Resources Specialist. She was denied certification as an HRS Specialist because she did not possess the minimum educational requirements, to wit, a high school diploma. She has, subsequently, received a High School Equivalency Diploma.

Her work at HRS has always been rated satisfactory or excellent by her supervisors.

She does not have any permanent title with the Human Resources Administration. Consequently, if appointments are made based upon the eligible list compiled from the challenged examination, she would be removed from her provisional position without right to revert to a permanent lesser position and would, therefore, be discharged from continued employment with the Human Resources Administration. This would occur notwithstanding the fact that she has been employed by the Human Resources Administration for more than six years with continued and unvarying satisfactory ratings for her performance in her work.

John Goyco

If called to testify, JOHN GOYCO would testify as follows:

He is Puerto Rican. He has been employed by HRA in the position of provisional HRS since 1967. On October 14, 1972, he took the open competitive Human Resources

Additional Stipulated Facts

Specialists examination numbered 1097. He was notified in November, 1973 that he had received a "failing" grade on the examination. As a result of his "failure", he is precluded from being certified as Human Resources Specialist. On the basis of his experience, he found that many of the questions on Examination No. 1097 were unrelated to the work performed by, or the knowledge required to perform the work of, a Human Resources Specialist. His work at HRA has always been rated satisfactory to excellent by his superiors.

He does not hold any permanent title within the Human Resources Administration. Consequently, if appointments are made from the list based upon the challenged examination, he will be subject to removal from his provisional position, without any right of reversion to any permanent position and, consequently, he will become subject to termination of and discharge from his employment with the Human Resources Administration after the passage of more than six years of work with that Agency and without ever having received any unsatisfactory evaluation of his ability to perform in the positions which he has held.

Johnnie McCoy

JOHNNIE MCCOY, if called as a witness, would testify as follows:

She is Black. She has been employed by HRA in the position of permanent Human Resources Specialist since 1969. She took the promotional examination numbered 1626 for the position of Senior Human Resources Specialist. On the

basis of her experience as an HRS, she found that many of the questions on Examination No. 1626 were unrelated to the work performed by, or the knowledge required to perform the work, of a Senior HRS.

She was notified in November of 1973, that she had received a "failing" grade on examination numbered 1626. As a result of her "failing" examination No. 1626, she will be precluded from being certified as a Senior HRS.

She does hold the permanent title Human Resources Specialist. However, by reason of the fact that she did not receive the determined "passing" score for the challenged examination, she will be denied the opportunity to function in a position of greater responsibility and higher salary, although her performance in her work at and in the title which she presently holds has always been rated satisfactory.

ADDITIONAL WITNESSES

If called to testify, the supervisors for the respective plaintiffs would testify, in essence, that each of them is an employee of HRA; that the respective plaintiffs are under their direct supervision; that the respective plaintiffs have always performed satisfactorily in their respective positions; and that if the respective plaintiffs are caused to leave the Agency, or otherwise not perform in the positions for which the challenged examinations were given, this would be detrimental to the Agency since the respective plaintiffs have demonstrated valuable expertise, knowledge, experience and skill in the positions which they hold, both on a permanent and provisional basis.

Additional Stipulated Facts

Dr. Felix Lopez would be called as an expert witness for plaintiffs on the question of the validity of the challenged examinations as appropriate instruments for determining the qualifications of candidates to hold the positions tested for. His expert opinions will be set forth in a written analyses to be provided to the Court and opposing counsel.

Transcript of Proceedings

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

JAMES C. JONES, GLORIA de BERRY, MARY J. ECCLES, CHARLOTTE JEFFERSON, each individually and on behalf of all others similarly situated,

Plaintiffs,

vs. : 73 Civ. 3815

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, JULE M. SUGARMAN, individually and in his capacity as Administrator of the New York City Department of Personnel, THE NEW YORK CITY CIVIL SERVICE COMMISSION, HARRY I. BRONSTEIN, individually and in his capacity as Director of the New York City Department of Personnel and Chairman of the New York City Civil Service Commission, and JAMES W. SMITH and DAVID STADTMAUER, each individually and in his capacity as Civil Service Commissioner,

Defendants.

----------x

Before:

HON. MORRIS E. LASKER, District Judge

New York, January 7, 1973,

APPEARANCES:

JEFFRY MINTZ, ESQ., and
EDWARD HOWARD, ESQ.,
Attorneys for plaintiffs

ADRIAN BURKE, ESQ.,
Corporation Counsel of the
City of New York
Paula Omansky, Esq.,
William Raskin, Esq., and
Frances Loren, Esq.,
Assistant Corporation Counsel

KATHY SCHNAPPER, Pro se.

- -

(In the robing room.)

THE COURT: Ladies and gentlemen, I have asked you to come into the robing room before we start the trial to put on the record two items, andthat is to dispose of or act on anyway two pending motions which have not been acted on.

First is a motion by Miss Schnapper, whom I invited to be present this morning, to intervene in this action.

After I met with counsel for the plaintiff and the defendant in this case, upon the motion of the plaintiffs to amend the complaint last week, and I believe prior to our meeting Friday afternoon on the new case, I telephoned Miss Schnapper to advise her that because of pressure of work I had not yet been able to act on her motion to intervene but that I intended to deny it

because although the papers seemed to me to be well drawn and intelligent, they did not persuade me that her intervention or intervention by her on behalf of others would illuminate the record in any way that would not already be done by the prosecution of the case by the plaintiffs and the defense of it by the city, and that I felt it would merely complicate what already is a complicated record in these cases and make it more difficult rather than less difficult to determine.

I pointed out to her she might have a right to appeal from this decision of mine, and that this created a practical problem because I felt by virtue of the public nature of the case we should proceed at this time to the trial, and that I would state for the record that if she did appeal and I was reversed on this disposition I would, of course, make the necessary arrangements to reopen the record so she could introduce any testimony that she wished to at that time or through her counsel or otherwise have the right to cross examine any witnesses who had testified.

Miss Schnapper indicated to me--she is not bound by this--that her motion was primarily made so that should she or her colleagues feel the case had not been properly tried she would have the legal right

to seek appropriate relief either at the end of the trial or to participate on appeal if the Court of Appeals found that she should have been granted the right to intervene. Am I correctly stating your position?

MISS SCHNAPPER: Yes.

THE COURT: I thought all this ought to be placed on the record in the presence of everybody, and that is the position I have taken at the present time. Do you wish to make any statement?

MISS SCHNAPPER: I think you have covered what I had intended to say. I don't want to do anything at this point to delay the orderly process of the trial.

At the time that I filed my motion to intervene I did feel that the position of persons on the list was perhaps -- their interests, at least, were somewhat different perhaps from those of the plaintiffs or the defendants. However, I am willing to await the outcome of these proceedings.

I did mention to you, as you said on the phone, my hesitation about holding out a list situation for possible appeal, that being that we could introduce new evidence or overturn the finding of fact. Also, that the intervention would be timely.

In intervening I had also hoped that attention would be called to some other problems that persons on the list were facing, and that those problems would have been taken into account at least in the informal pretrial negotiations between the parties and the union.

THE COURT: There haven't been any negotiations so far as I know of, or if they have, they certainly haven't been brought to the attention of the court.

Unfortunately, in cases of this kind they are not classically disposable by negotiation.

Let me say this. My reading of your papers did not persuade me, and this isn't any criticism, that your position, or the position of the people that you might seek to represent, would be inconsistent with the position of the plaintiffs, or that there was any conflict there.

MS. OMANSKY: The defendants.

THE COURT: Pardon me. The defendants.

And if there is any material that you are concerned would not be adequately presented it seems to me the logical thing would be to advise the defendants of your area of concern so that they could be sure they at least had that information in mind in charting their course.

MISS SCHNAPPER: Your Honor, the only area that perhaps I didn't cover strongly in my paper where there might be a degree of opposition with the defendants, and perhaps where we are closer to the position of the plaintiffs,and perhaps I didn't make it strong enough, is the handling of the entire issue of provisional appointments.

I feel very strongly that the plaintiffs and all city employees were in a difficult position by the inordinately long time that professional appointees were in their positions without any opportunity for an open competitive or promotional opportunity.

THE COURT: As I recall the issues before me that is not in issue before me. The only matter that is in issue before me is whether or not the test or tests, if there is more than one -- I don't recall offhand; there is only one, is there not?

MR. MINTZ: One and an eighth.

THE COURT: -- the test material before me has the result, either because of deliberate effort or in spite of no deliberate effort, of discriminating in its impact on the various racial groups who make up the testees And the period of professional appointment, or any such arrangements, is simply not a matter of this lawsuit.

There may be administrative channels in which you may express your grievance in that regard, but that would be another reason, frankly, why I don't think it would be appropriate for allowing the motion to intervene.

MS. OMANSKY: I would like to be heard, if I may.

THE COURT: Sure.

MS. OMANSKY: I must tell you I am disturbed on two counts. One is Miss Schnapper is not a lawyer and I think perhaps you have given her the impression she may have reason to appeal, and of course I think you should make clear to her that you have not made up your mind in any way about this case, and if the defendants are successful and the lists are upheld and the examinations are deemed to be job related there would, of course, be no necessity for her to take an independent appeal from that type of ruling.

THE COURT: I will be glad to state that I agree with what you have just said.

MISS SCHNAPPER: That was clear.

THE COURT: That is a matter of law.

MS. OMANSKY: Secondly, I do not -

THE COURT: I was not talking about an

appeal from my disposition of the substance of the case. I think she may have the right to appeal from my denial of her motion to intervene.

MS. OMANSKY: I beg your pardon. I am sorry.

THE COURT: Tnat is what I meant.

MS. OMANSKY: I am sorry. I am a lawyer and I didn't understand.

THE COURT: I am a judge and I didn't make myself clear.

MS. OMANSKY: One other factor, you did mention there might be opportunity to open the record again for purposes of taking new testimony, and that bothed me.

THE COURT: I was just thinking through this. If Miss Schnapper has the right to appeal and does appeal my denial of her motion to intervene, and the record were already complete, I would have to adopt some kind of appropriate procedure to put her in the position in which the Court of Appeals hypothetically or by hypothesis could say she should have been in in the first place and that is the only way I can imagine it could be done.

MS. OMANSKY: I would like to state on the record I would be delighted to have Miss Schnapper con-

sult with me and give me some indications of the areas she thinks she would like to cover, and I would be glad to take those into consideration very seriously. She has already done a marvelous job, I think, on the papers, as I have already commented, and I justwanted to make it clear that defense counsel is available to you.

MISS SCHNAPPER: Thank you. As I said, I trust the good judgment of all parties and I am willing -- can I withdraw my motion at this point?

THE COURT: If you were willing to withdraw the motion it would be helpful to us.

MISS SCHNAPPER: Fine.

THE COURT: Thank you. I hope you don't feel you have been pressured in any way.

MISS SCHNAPPER: No, just outnumbered.

THE COURT: The second matter to put on the record is there is pending the motion for a class action determination, and I believe the attorneys for both sides have indicated informally in the past, and I would like them to indicate for the record now they have agreed that action on that motion can be deferred until the case is decided on its merits.

MS. OMANSKY: That is agreeable to me.

MR. HOWARD: Yes, that is our understanding.

MS. OMANSKY: I think Mr. Howard did agree to amend the caption to join a Hispanic who is capable of representing the class.

MR. HOWARD: Yes, we discussed that, and we should be able to do that.

MS. OMANSKY: That would be just a matter of form.

MR. MINTZ: We do have such a client but in the pressure of preparing for the trial we simply haven't gotten around to making that change.

I have a small technical problem which I might say here since I may not be technically a member of this bar.

MR. HOWARD: I am a member of the bar entitled to practice before this court and I would like to move Mr. Mintz' admission for the purpose of this trial.

THE COURT: That motion is granted.

(In the courtroom.)

(Case called.)

THE CLERK: Plaintiffs ready?

MR. HOWARD: Yes.

THE CLERK: Are the defendants ready?

MS. OMANSKY: Defendants are ready.

THE COURT: Ladies and gentlemen, addressing myself to counsel, although I, of course, understand the general nature of this case, and have not only read such papers as have been filed so far - although I have not read the depositions - and have conferred with you several times, you may wish to make a brief opening statement as to what proof you expect to put before me during the course of the trial, and I think that would be helpful if you can do that so that I can follow it as intelligently as possible.

Mr. Howard, will you in charge of matters for the plaintiffs?

MR.HOWARD: Yes.

(Opening statement on behalf of plaintiffs.)

MR. HOWARD: Your Honor, the plaintiffs in this action are employees of the New York City Human Resources Administration who, in October of 1972, took certain examinations which are the subject of the lawsuit before

your Honor.

The examinations were, respectively, a promotion examination and a so-called competitive examination, both purporting to test for appointment for the position of supervising human resources specialist.

The several plaintiffs all at the time of taking the examination and since that time have held the position of provisional supervising human resources specialist, and this examination was intended to determine whether they should be permanently appointed to that position.

Subsequently, and in August of 1973, the results of the examinations were promulgated, and all the several plaintiffs in the action failed to pass either of the examinations, either the open competitive examination or the promotion examination; and upon plaintiffs securing ~~false~~ statistical information concerning the numbers who had passed and upon their being able to make some judgment as to racial classifications and ethnic classifications, it appeared that with respect to both of the examinations in issue there is a markedly disparate difference in the number and percentage of whites who passed the examinations as contrasted with blacks and Hispanics.

Based upon the relevant federal statutes, the plaintiffs instituted a lawsuit in this court to invalidate

the examinations and seeking both a preliminary injunction and a permanent injunction against any appointments being made by the defendants in this action based upon the examinations, on the grounds that these examinations are, in fact, discriminatory in their application against blacks and Hispanics, and do not, in addition, constitute a valid basis for determining the qualifications and ability to perform the jobs tested.

And we are before your Honor now to attempt to prove that, one, that the examinations are discriminatory, and, two, that the examinations are not job related, although I will say, your Honor, that it is my understanding that upon our establishing the discriminatory impact and the effect of the examinations, that it will become incumbent upon the defendants to establish that these examinations are, in fact, job related.

We intend to call as witnesses some of the named plaintiffs who hold the positions in question, and, your Honor, we will also probably call those who supervise them will be able to testify with respect to the quality of the work of the witnesses, the plaintiffs in this action.

THE COURT: Thank you, Mr. Howard.

Ms. Omansky?

(Opening statement on behalf of defendants.)

MS. OMANSKY: In cases alleging discrimination in employment, the burden on municipalities is a very heavy burden. It must show that an examination is substantially job related, assuming that plaintiffs have made out a prima facie case of disparate impact.

The defendants plan to prove that the examination is job related.

First we intend to show that the method of preparation for this examination was detailed, carefully considered and was fully consistent with professional standards.

We will call as one of our witnesses the person who did what is, in the now familiar jargon, a job analysis.

We will also have as one of our witnesses the person who appeared at the examination and the steps that she took to make sure that the examination conformed to a job description, job analysis which had been approved by the agency in question.

We will have outside, independent testimony going to the effect that the examinations were consistent - that the preparation was consistent with what the examinations themselves were supposed to achieve, and that is, to test the knowledge and ability to perform the job of supervising human resources specialist.

I think in the course of the trial we will find out

how broad and howwidely encompassing a job it is. The position of supervising human resources specialist is a multitude of jobs and individual tasks.

And, finally, we will have an official of the agency itself who will be testifying that in his opinion, although he is not a testing expert, that the examinations were job related.

THE COURT: Thank you, Ms. Omansky.

All right, Mr. Howard, do you want to call your first witness?

MR. MINTZ: If we may, your Honor, we would like to begin by introducing certain documentary evidence primarily of a statistical nature.

I believe on the basis of the prior discussion with defense counsel this will be introduced by agreement.

I would like guidance from your Honor on one point: Much of this, in fact, everything I am about to speak to, is derived from information contained in the defendant's response to interrogatories.

Would the Court wish that we introduce these documents as exhibits at this point or may they be transferred from the Court's interrogatory file and become exhibits?

THE COURT: I think it is more orderly if we designate them as exhibits so we know precisely what we are

talking about.

If you want to bring them up here the clerk will mark them and we will specify for the record what the exhibit is.

MR. MINTZ: The first item was denominated to us as Attachment 3 to the defendant's answer to interrogatories. It is in four parts and, unfortunately, rather bulky.

And it consists of a computer printout of everyone who applied to take, in the case of these two, the promotion examination No. 1631, the first in issue in this case, and in the second instance, the open competitive examination, No. 2013.

We received one document which had racial designations on it. These were derived from the records of the agency, the personnel file.

Another document which, regrettably, lacked race but had all the scores and the outcome as to each person, Pass, Fail, Did Not Appear, was ruled ineligible. Each of these denominations appears on here.

My secretary has undertaken the task of transferring the racial designations to the sheet which contains the greater information, and counting, the very mechanical task of counting the number of people who appeared, and

I have a copy of those results, and would, if appropriate, introduce collectively as Exhibit 1 these four documents which was original Attachment 3 --

THE COURT: Is that sheet you are holding in your hand a resume?

MR. MINTZ: This sheet is the numerical counting results which I say --

THE COURT: Subject to the defendants' right to contest the accuracy of the material in that sheet, suppose I accept all these exhibits, including that, because I assume that will be helpful to me when the time comes to decide it.

MR. MINTZ: I am quite certain we did it with that in mind.

I do have, if the Court would like, an extra copy of that if the Court would wish to read it at the bench.

THE COURT: All right, those documents are received, I assume without objection?

MS. OMANSKY: Yes, again subject to the checking of the arithmetic.

THE COURT: Yes, of course.

MR. MINTZ: That was the understanding.

THE COURT: It is received collectively as Exhibit 1 for the purposes indicated by Mr. Mintz.

(Plaintiffs' Exhibit 1 was received in evidence.)

MR. MINTZ: I should point , and the defendants may hopefully clarify it at some point, the disparity between the count reached by my secretary from these papers and the count originally received by us from the defendants in September in response to our initial request.

A couple of points: For example, we show a fewer number of people having passed the examination than they did at that time. We were supplied with this information, and they may wish to check those disparities.

THE COURT: All right.

I hope that it will be possible to reconcile the disparities during the course of the proceedings.

Now, I will ask the clerk, however, to mark each of the documents you have handed up as 1-A, 1-B, and so forth, because otherwise I think in trying to refer to them either in the briefs or in the written opinion, it can be confusing.

MR. MINTZ: The second document which we wish to introduce was originally denominated Attachment 5 to the defendants responses to interrogatories.

This is a listing of all persons who were provisional supervising human resources specialists

as of September 1, 1973, essentially within a day or two of the time this action was filed.

THE COURT All persons who were --

MR. MINTZ: Provisional supervising human resources specialist.

This list, besides containing the names, also contains the racial designation, again, from agency personal files, the assignment, the date appointed as a provisional supervisor, the date first appointed to the Human Resources Administration, and the title of the first appointment for each person.

With regard to this list, which may be called Exhibit 2, I havemyself done a count which at this point is in rough pencil form on a yellow sheet.

If I could simply read those figures into the record now I will later have it typed and introduced --

THE COURT: I would suggest that before reading them into the record, again you submit a copy to Ms. Omansky so we can be sure that if there is any disagreement it will be ironed out and , if not, it will be stated that the results are accepted.

MR. MINTZ: I can give her those figures almost immediately.

And the third document we wish to introduce at this

time was originally designed Attachment 7 to the answers to interrogatories. This is a list of persons who were notified that they would be appointed as permanent supervising human resources specialist as of September 14, and would, in fact, have been appointed were it not for this Court's restraining order, and will be appointed should the defendants prevail in this action.

Again, this contains ethnic identification as white, black, Hispanic, with the exception of a very small number I counted three blanks or indications of other race.

It contains the agency to which they were appointed, their scores in the examination, their position on the list, and their assignments if they were to have been appointed.

Again, I have personally done a count of the number of blacks, whites and Hispanics on this.

Collectively we believe these three items show a racial impact, and this can be Exhibit 3.

THE COURT: Both Exhibits 2 and 3 as I understand them are received without objection; is that correct?

MS. OMANSKY: Yes.

MS. OMANSKY: Yes.

(Plaintiffs' Exhibits 2 and 3 were received in evidence.)

MR. MINTZ: That is all I have at this time.

THE COURT: All right.

MR. HOWARD: Mr. Jones.

J A M E S C. J O N E S, called as a witness in behalf of the Plainitffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOWARD:

Q Mr. Jones, are you employed?

A Yes.

Q Where are you employed?

A I am presently an employee of the Human Resources Administration.

Q What position do you hold there?

A My present position is supervising human resources specialist.

Q How long have you held that position?

A Supervising human resources specialist.

Q How long have you held that position?

A I have held that position since April 1971.

Q How long have you been employed by the Human Resources Administration?

A I have been employed by the Human Resources Administration since July of 1968.

Q Have you held other positions with the Administration?

A Yes. Other than supervising human resources specialist, yes.

I came into the agency in July 1968 as a human resources specialist.

In January of 1969 I was promoted to senior human resources specialist.

In April of 1971 I was promoted to my present position of supervising human resources specialist.

In the meantime, well, rather, during that period in April of 1970 I was appointed permanent civil service senior HRS.

Q That is senior human resources specialist?

A Yes, permanent.

Q Does that summarize your positions you have held with the Human Resources Administration?

A Well, it summarizes the titles on which I was paid.

Functionally I served in a number of positions.

I originally came into the agency in July of 1968 in the Policy and Planning Unit as a form designer. I only worked there for about two months, and eventually went over -- after a two-month period I went over to the

personnel division, and in that division I worked with a person whom I eventually replaced in January of 1969. At that date I was promoted to senior human resources specialist, and also functioned as the chief of personnel processing and control.

In April of 1971 I was promoted to a functional title of chief personnel processing control and budget --

Q Let me stop you at that point, Mr. Jones:

Would you outline for us your formal educational background?

A I grew up in Albany, Georgia.

I attended Tift Elementary School, Carver Park Junior High School in that city, Albany, Georgia.

I graduated from Monroe Senior High School second in a class of 214.

Upon graduation I received four scholarships: One scholarship was in music to Florida A&M University in Tallahassee, Florida; the second scholarship was an academic scholarship to Talladega College in Talladega, Alabama.

The third scholarship was an academic scholarship to Moorehouse College in Atlanta, Georgia; and the fourth scholarship was an academic scholarship to Lincoln University in Pennsylvania.

Q Did you accept any of these scholarships?

A Well, here is what happened: As to the scholarships or partial scholarships, I didn't have the supplementary moneys to supplement those scholarships. Therefore I had to take, or, rather enroll at a school that my family could afford, and that was state college, Albany State College in Albany, Georgia. That was the first college I attended, and I attended there during September 1961 to December of 1961, one quarter.

After attending there I eventually went to one of the schools where I received a scholarship, and, as a matter of fact, that college did renew the scholarship that had been origially issued on graduation --

THE COURT: Which one was that?

THE WITNESS: That was Moorehouse College in Atlanta, Georgia.

I attended there for a year and a half from September 1962 to June of 1963.

THE COURT: And you were on scholarship there, is that it?

THE WITNESS: I was on scholarship, partial scholarship there.

Eventually I came to New York in 1964, and in 1967, January of 1967, I enrolled at City College of New York,

uptown division, where I eventually received at B.A. in Economics, in June of 1970.

Upon graduation from CCNY I immediately enrolled - upon taking the Law Boards examination I enrolled at the St. John's Univeristy School of Law, where I am presently attending, and I will, hopefully, graduate in June of 1974 with a J.D.

Q Now, you were about to describe your duties as chief of personnel processing and control.

Will you do that, please?

A Yes.

In that position I was responsible for --

THE COURT: Which position was this? These job titles are being thrown at me a little too fast, because I am not as well acquainted with them as you are.

Which one is this?

THE WITNESS: This is the chief personnel processing and control. That is the functional title. The actual title was senior human resources specialist.

THE COURT: Yes, but this is the first of these two that have similar titles. The last one you said was chief personnel processing and control budget?

THE WITNESS: Yes.

THE COURT: We are talking about the first one?

THE WITNESS: This is the first part of that same title. I started out as chief of personnel processing and control, and in that position --

Q Describe your duties in that position.

A In that position I was in charge of the processing of all personnel actions pertaining to termination, promotions, new hiring and I was responsible for the development of statistical analysis for turnover ratios, hiring ratios, staffing patterns.

I also in that position created a salary plan for the Administration.

I sat in on a number of planning meetings having to do with personnel problems with the cith department personnel and the New York City Bureau of the Budget.

The second half of that functional title was Chief of Personnel Processing, Control and Budgeting.

That job started in April of 1971 when I was supervising human resources specialist, and it entailed a performance of the same jobs and duties and responsibilities which I've just mentioned, plus, or in addition, I also had responsibility of processing all budget actions, or all actions requiring Bureau of the Budget approval prior to appointment.

Q When you say processing all budget actions,

will you describe in more detail, if you can, what that means?

A According to the City Charter, the New York City Charter, each agency is required to get Bureau of the Budget approval to make hirings in certain categories. I don't know what the categories presently are since I am not in personnel, but at the time I was in personnel it entailed getting Bureau of the Budget approval for any action which was at the level of managerial - any action which required policy making decision, or, at one point, it was $13,100.

Processing required preparing a budget modification request either in the form of a D.M. certificate, or an M.A. certificate or an M.W. certificate.

The request itself was addressed to the Director of the Bureau of the Budget, and we included in the package certain materials which would be helpful in allowing the Director of the Bureau of the Budget to make a determination on whether specific people who were named in the request should be hired, depending on whether they had met certain criteria set out by the Bureau of the Budget.

The processing entailed this kind of action.

It also included --

THE COURT: Mr. Jones, about how many such

will arise in a year?

THE WITNESS: Where I would have to process a Bureau of the Budget action?

THE COURT: Yes.

THE WITNESS: 200, 300; in the neighborhood of two or three hundred per year. That unit itself -- I had to have additional people to work with. It was about four additional people I had to get to run that unit in addition to the other people I already had at that time.

BY MR. HOWARD:

Q Incidentally, Mr. Jones, in what major area of study did you obtain your undergraduate degree?

A A B.A. in Economics.

Q A B.A. in Economics?

A Yes.

Q Do you still hold the same position with respect to which you have been testifying?

A No.

Q Tell me when it changed?

A Well, in April of 1973 I transferred from the Personnel Division to the Division of Labor Relations.

In that position I was assistant to the Deputy Director of Labor Relations, and my responsibilities were to sit in on union contract negotiations.

I provided liaison between the Human Resources Administration and the General Counsel for the office of Labor Relations --

THE COURT: May I ask a question, Mr. Jones.

I know there is an office of Labor Relations. In fact, I used to deal with them myself before I became a Judge, which is headed by a Mr. Haber, as I recall, which is a separate office in the HRA.

Is that the office you are talking about?

THE WITNESS: Yes, that is correct, it is the New York City Office of Labor Relations.

THE COURT: And you were a deputy in the Division of Labor Relations of HRA butyou dealt with the office of Labor Relations of the City; is that it?

THE WITNESS: Precisely.

I was liaison between Human Resources Administration, Division of Human Relations and the New York City Office of Labor Relations, specifically having contact with the General Counsel of the Office of Labor Relations.

I also had some contact with the office of Collective Bargaining in that position.

In that position I assisted in prepping witnesses who appeared in representation hearings before the New York State Labor Relations Board.

I monitored those hearings.

In addition I monitored grievances from individual employees within the agency.

Q Mr. Jones, let me ask you: in October of 1972 did you take a certain examination given by the New York City Department of Personnel?

A Yes, I did.

Q Denominated Examination No. 163, for promotion to supervising human resources specialist?

A Yes.

Q When did you become aware such an examination was to be given for promotion to supervising human resources specialist? That is the examination you took?

A Yes. I think I either became aware of it from information through the agency, information circulated within the agency, or seeing a notice of it posted somewhere around the agency, or simply seeing a notice at the 49 Thomas Street location some time in May of 1972, or April of 1972. It was the spring of 1972.

Q Did you become aware of any eligibility requirements to take that examination?

A Yes. I was sort of familiar with the eligibility requirements since I was at that time working in personnel and part of any responsibility was to determine whether other employees were entitled to employment within the agency, so I was aware of the eligibility

requirements.

Q Can you tell us generally what the eligibility requirements were for this examination?

MS. OMANSKY: I have an objection to that because I think the notice of examination does give you the eligibility requirements. If you want to introduce the notice of examination I have no objection.

THE COURT: I agree with Ms. Omansky. I assume they speak for themselves. If you want to bring them to my attention at this time I will be glad to have that done.

When did you say you took the examination?

THE WITNESS: October of 1972.

Q Were you in fact eligible to take such examination?

A Yes, on the basis of my experience in working in personnel and being familiar with the requirements for most of the titles used within the agency I believe that I was eligible on the basis of the qualifications which I already possessed to be eligible for that examination.

THE COURT: I take it, maybe incorrectly, but if so I should be told, that it is not in issue that Mr. Jones was eligible to take the test. Is it?

MR. HOWARD: No, your Honor, I don't believe so, but I want to develop fully the background.

THE COURT: Surely.

Q Mr. Jones, were you subsequently advised of what score you had achieved on this examination?

A Yes. I think I was advised through the receipt of a card from the New York City Department of Personnel in perhaps August of 1973 saying that my grade was 65 and I had failed the examination.

Q That your grade was what?

A 65, and that I had failed the examination.

Q Was there a grade score that denominated a minimum passing score?

A Yes, I think there was a denomination that 70 was passing.

Q Do you have at the present time any recollection of the content of the examination that you took?

MS. OMANSKY: Again, I would object on the grounds that I have no objection to introducing the examinatonis.

THE COURT: I don't know whether Mr. Howard is going to ask about the content or about his recollection. They are two different subjects.

MS. OMANSKY: If he is going to ask his

recollection of the content of the exams that is precsiely my objection since the exams speak for themselves.

MR. HOWARD: I am asking whether he recalls.

THE COURT: Obviously the content of the exam is controlled by the printed word, but you may wish to ask some questions about the witness' personal knowledge, and if so, I will listen.

A Yes, I do have some personal knowledge about the examination.

Q Mr. Jones, basedupon your experience as a divisional supervising human resources specialist, as you have outlined it this morning, will you tell us whether the examination that you took bore a relationship to the duties of your position?

THE COURT: In your opinion.

Q In your opinion.

A Yes, okay.

In my opinion, the examination was not relevant to the experience which I had been exposed to during the five, almost six years of employment with that agency, and it was not relevant to the three or four years of experience which I have had in the title supervising human resources specialist.

Q Can you give us any details as to why the examination was not relevant to your duties?

A Yes. I submitted an affidavit which I have explained of one method whereby I reached the conclusion that the examination was not job related. What I did with that analysis was I took the 80 questions on the examination, not so much as looking at specific questions and answers, but I simply categorized them into easily detectable categories such as how many questions were related to management, how many questions were related to community program development, how many questions were related to community social services, how many questions were related to income maintenance, etc.

As a result of that analysis and that grouping I determined that for a person who came into the agency or who took the examination, came into the examination, rather, with management experience his chance of passing the examination was very low. In fact, of 80 questions, assuming there was no problem with individual questions of construction, of questions of other types of problems with the question which I am not going into at this point, a person could only have gotten 47 questions which would have been relevant to the management type of experience. 47 questions out of 80 is about

59 per cent, I think it is.

By working the same answer, I discovered that grouping these questions into these categories and trying to determine which one would be relevant to, say, a person who had income maintenance experience, I determined that a person with income maintenance experience taking the examination had a chance of getting some 65 out of 80 questions correct, and that would be possibly an 81 per cent grade, assuming that he answered all relevant questions correctly.

Following that same analysis, I determined that there were no questions on the examination for the title supervising human resources specialist and for a person who would have experience in auditing.

Also, there were no questions or very few questions which would be related to a person with job experience in community program development.

As a result of that analysis I concluded that I couldn't possibly have passed the examination because there simply weren't enough relevant questions on the examination to bring me above the 70 required passing grade.

THE COURT: Mr. Jones, I missed the last category you referred to after auditing. You said there

were only a few.

THE WITNESS: Yes, there were a few questions related to the job specialty of community program development.

THE COURT: Okay.

THE WITNESS: To understand what I have just said you have to -- well, I will have to state that it was the original intent of the agency in setting up these titles to develop parentheticals for the generic title of supervising human resources specialist.

For example, this intent is manifested by the union contract, the present union contract, which lists all of these titles as being those titles which are represented by the SSEU union. Most titles are listed as supervising human resources specialist (MDT).

THE COURT: What does that mean?

THE WITNESS: Manpower development and training.

There is a title listed as supervising human resources specialist (CPD), and that means community program development.

There is a title listed as supervising human resources specialist, management, MGT.

There is a title listed as supervising human

resources specialist (AUD.), which means auditing.

It was the original intent to break these titles down to the parentheticals to avoid the problem of giving an examination which would be all-inclusive of those occupational groups and might run a chance of presenting the problem that we have with this examination.

In the past, when I was in personnel, we always assigned people, employees or prospective employees, to the division in which their job experience they brought with them was most related. For example, I never assigned an accountant to a program development division. Although he was hired as supervising human resources specialist he always went to the fiscal or the auditing department.

The reason for that is we had been told, or we had been led to believe -- we meaning the employees in the Division of Personnel, responsible for these things -- that all of these titles, an examination would be given for these titles and there would be parentheticals.

THE COURT: Who led you to believe that?

THE **WITNESS**: Let me put it this way. I had been led to believe that the examinations, when eventually given, would have included these parenthetical designations. I was led to believe that --

BY MR. HOWARD:

Q Let me ask you this, Mr. Jones, which might be helpful to his Honor.

Did you at any point have an involvement in the negotiation of any collective bargaining a reements or labor contracts relating to the position of supervising HRS?

A Not a collective bargaining contract situation. I have sat in on fringe kinds of discussons but not a collective bargaining contract.

Q Were you involved with respect to your duties as a chief of processing personnel, and so forth, with the development of the parentheticals you have referred to?

A Yes.

Q How did they develop?

THE COURT: You mean how did they develop and come about?

MR. HOWARD: Yes, sir.

A I wasn't involved in the direct development of the supervising human resources specialist parentheticals per se but I did sit in on a number, several planning sessions where this particular division or the introduction of parenthetical titles was discussed.

I also sat in on other kinds of discussions with employees within my agency mostly and in some cases with employees from the Bureau of the Budget and the city Department of Personnel pertaining to policy decisions on parentheticals or the production or the creation of titles with parenthetical designations.

THE COURT: I am not clear from your testimony, Mr. Jones, whether such parentheticals ever actually came into existence, or whether they were merely discussed and perhaps informally used but not ever formalized.

THE WITNESS: Yes, the parenthetical titles were in existence on the one higher than the one in issue here. On the supervising human resources specialist examination, the first one, parentheticals were used.

THE COURT: Was that an examination prior to the one you took?

THE WITNESS: Yes. As a matter of fact, it was the very first examination ever to be given in this title perhaps three or four years ago. I don't remember the exact date.

In this examination itself, on the date of the examination that we have here in issue, there was an

examination given for one parenthetical, supervising human resources specialist (MDT).

Also, we have provisionals within the agency right at this moment in any number of those parenthetical titles, especially supervising auditing.

THE COURT: Thank you.

BY MR. HOWARD:

Q Incidentally, Mr. Jones, does the word "supervising" in terms of the title supervising human resources specialist necessarily mean that one holding that title must supervise other employees?

A Not necessarily. As a matter of fact, I recall vaguely that the job specifications might indicate that supervision is not absolutely required. You can work alone, it can be independent work with broad latitude for performing policy-making decisions, or management decisions, or as consultant to a person who is in a principal policy-making decision.

Q But the position itself in terms of a specific duty doesn't necessarily involve overseeing the work of others?

A That is right.

THE COURT: It relates to the level of the job?

THE WITNESS: Yes, it relates to the level of responsibility more so than it does to whether you supervised or not.

BY MR. HOWARD:

Q Mr. Jones, has your work since you have been a provisional supervising HRS been evaluated by superiors?

A Yes.

Q Are you aware of those evaluations in terms of whether they have been satisfactory or unsatisfactory or otherwise?

A Yes. They have all been satisfactory.

MR. HOWARD: I have no further questions of this witness, your Honor.

THE COURT: Thank you.

MR. HOWARD: At this time I offer in evidence the examination with respect to which the witness has been testifying, examination No. 1631, and also the notice of that examination and amended notice of that examination.

THE COURT: Would you like to check them out over the lunch hour?

MR. HOWARD: We received them from the defendants.

THE COURT: She would want to check to see

they are in the same condition, though there is no implication that they are not.

MS. OMANSKY: I ahve no objection, but I would like to have a list of them.

THE COURT: Let's have them marked now, and after they have heen marked you can specify for the record which each one is.

(Plaintiffs' Exhibits 4 and 4A were marked for identification.)

THE COURT: Those documents are admitted in evidence.

(Plaintiffs' Exhibits 4 and 4A were received in evidence.)

CROSS EXAMINATION

BY MS. OMANSKY:

Q Mr. Jones, I am going to hand you a document. I think there will be no problem for you to identify that. Do you recognize that document? You can say what it is?

A Yes, I recognize this document.

Q What is it?

A It is a second affidavit of James C. Jones in support of plaintiffs' application for a temporary restraining order in a preliminary injunction.

Q Did you sign that affidavit?

A Yes, I did.

MS. OMANSKY: I would like to offer the affidavit in evidence.

THE COURT: All right.

MR. HOWARD: No objection.

(Defendants' Exhibit A was received in evidence.)

THE COURT: What's the date of that affidavit?

MS. OMANSKY: September 11, 1973.

BY MS. OMANSKY:

Q Mr. Jones, you are presently assistant to the deputy director of labor relations in HRA, is that right?

A No.

Q What is your present title?

A As of October, 1973 my present title is investigator in the Office of the Inspector General, HRA Office of the Inspector General.

Q That comes as a surprise to me. Is that a supervising human resources specialist?

A Yes. The same classification title.

Q I would like to explore just a little bit what

you do as an investigator in the Office of the Inspector General?

A Investigations of a confidential nature.

THE COURT: You mean you can't tell us about it?

THE WITNESS: I suppose I could tell you generally.

THE COURT: Can you tell us the categories that you investigate?

THE WITNESS: We are looking into fraud, embezzlement, other kinds of crime that has to do with our programs that are funded through the City of New York Human Resources Administration.

Q This is fraud and embezzlement on the part of employees of the Human Resources Administration?

A It could be employees.

Q Who else could it be?

A It could be someone who is working with employees, in collusion with employees. A bus company --

THE COURT: Someone who has a contract, you mean?

THE WITNESS: Contracts.

THE COURT: Would it have anything to do with -- people don't make claims, do they, like a claim for wel-

fare that might be a fraudulent claim?

THE WITNESS: That is another division. I work in the Review Division. That is the Concealed Assets Division within the Office of the Inspector General. And you are right, there is a unit that handles that.

THE COURT: You don't deal with that?

THE WITNESS: No.

THE COURT: I am trying to zero in on your job, or Ms. Omansky seems to be.

MS. OMANSKY: As a matter of curiosity.

Q I would like to go back to the duties described in your affidavit as assistant to the deputy director of labor relations. You were in that position from April of 1973?

A To October, 1973.

Q Now, I would like to read -- you can read along with me -- from the duty sheet. You stated --

THE COURT: What page is this?

MS. OMANSKY: It's Exhibit A.

THE COURT: Exhibit A?

MS. OMANSKY: Yes, your Honor, the first page of Exhibit A.

THE COURT: Right.

Q You state that you -- and I quote -- assisted representing the Human Resources Administration in negotiating contracts between public vendors and anti-poverty services."

A Yes.

Q "For representation hearings before the New York Labor Relations Board."

A Yes.

Q "Representation hearings before the New York Labor Relations Board"?

A Yes.

Q "Interpret and negotiate contracts."

A Yes, right.

Q Then I skip to "Grievance Procedures."

"And employees' labor relation conflicts before they reach agreement."

A Yes.

Q You did all that?

A Yes.

Q How much time did you spend in the area of labor relations?

A It's a full-time job.

Q Can you tell me how many other supervising human resources specialists are in the same type of work?

A Not a single one. As a matter of fact, that was sort of a problem. Working in that division unit that contributed to the fact that I am not working there now.

Q What knowledge did you have in order to perform those duties?

A I told you what happened. I looked at the job specifications, whose related title is Labor Relations Specialist. And it simply requires a knowledge of reading U.S. Bureau of Census material, Department of Labor Statistics, analysis, knowing something about contract negotiations. All of those experiences I had brought with me before I came into the unit.

For example, as assistant director of personnel, one of the units I headed would be the labor relations liaison unit. So I was thoroughly familiar with the problems of labor relations as a result of supervising one of those

ancillary units. We were working with labor relations.

Q You say that you are a lawyer --

THE COURT: He studied law.

Q You said you studied law, is that correct, at St. John's?

A Yes.

Q Do you have to have legal knowledge to interpret Office of Collective Bargaining decisions?

A No, you really don't. It is not a requirement. It was absolutely helpful, though, because the interpretations were usually to lay people; for example, there was one instance where you interpreted the contract for the Council against poverty where you actually had community people. They might not necessarily be people with extremely high levels of education.

So the legal training did come in handy in helping me to sort of explain these kinds of decisions to them. It wasn't required.

Q Would the examination for Supervising Human Resources Specialist be job related to interpreting contracts and the Office of Collective Bargaining decisions?

A Probably yes, depending upon whether a parenthetical was added and depending on what parenthetical it fell into.

Q May I ask you what parenthetical that would be in?

A What --

Q To which parenthetical --

A Would what?

Q -- would an examination for Supervising Human Resources Specialist which tested for ability to negotiate contracts and interpret contracts and decisions -- to which parenthetical would it be added?

A I would think more or less it would be in the management parenthetical because it requires interpretation of policy decisions which is basically management, so that would be the most appropriate category.

Of course, you have to understand that I am confining myself simply to those categories that already exist.

Perhaps there is the possible creation of Supervising Human Resources Specialist in, for instance, labor relations. We don't have that now, but the category for which that exists would probably be management.

Q One of the co-plaintiffs in this lawsuit is a man named Andrew Jackson and he says he is a specialist in management, too, and according to the information supplied by your counsel he states that he is responsible for processing all personnel actions from the hiring determination of staff, responsibility for the maintenance of all

personnel records, manning tables, files, timekeeping records.

Do you know how much of his time is spent in labor relations?

A In Labor relations?

Q Yes.

A He is in personnel.

Q He is in personnel?

A Yes.

Q But you just told me that labor relations questions would be related to the area of management?

A Yes.

Q And Mr. Jackson says he is in the area of management; is that correct?

A That's correct.

Q And you just told me that the questions on the exam that could properly be addressed to labor relations material would be job related and I am asking you --

A Only to the extent that it has to do with interpretation of decisions or high policy level decisions. Not all labor relations experience, as you are indicating, would fall under management; just those that you mentioned and those that I agreed to which would be the high level policy making decisions.

Q But this is work that you would have to supervise as a supervising human resources specialist in the area of management; is that correct?

A That is correct.

Q Now, do you think that the questions on interpreting contracts would be job related to Mr. Jackson's present duties in personnel?

A No, it would not, but if he is interpreting policy decisions of a high level I suppose that would fall into the category of not specifically labor relations.

Q It doesn't mean he would interpret decisions on a high level; rather your counsel said he does largely personnel work?

A Yes, but the Supervising Human Resources Specialist does include that requirement, one of the responsibilities is listed as such.

Q Do you know whether Gloria de Berry, who is also a plaintiff in the suit, had occasion to interpret contracts?

THE COURT: How do you spell her last name?

MS. OMANSKY: D-e B-e-r-r-y.

THE COURT: Thank you.

Go ahead.

A I couldn't testify as to Ms. De Berry.

Q I believe your counsel says she is also in the specialty of management. I think it does list what she does.

MS. OMANSKY: Your Honor, that is a part of the papers that were supplied to me in the complaint. I don't know whether they are properly admissible into evidence.

THE COURT: I don't think they need to be in evidence for you to question the witness.

MS. OMANSKY: All right.

THE COURT: They are part of the record.

Do you want to specify what the document is?

MS. OMANSKY: This is the second affidavit of Gloria De Berry who resigned on December 11th.

THE COURT: Right.

MR. HOWARD: May we also have clarification of what she is referring to?

MS. OMANSKY: In your answer to my --

MR.HOWARD: Can you specify whatever document you are talking about?

MS. OMANSKY: I was referring to plaintiffs' answer to defendants' interrogatories.

MR. HOWARD: Thank you.

Q Do you see anything on Gloria de Berry's duties which would indicate that she would be able to answer questions

on labor relations?

A Oh, I haven't read this affidavit.

Q All right.

Do you think --

MS. OMANSKY: I withdraw the question then.

Q Do you think the questions on labor relations, negotiating contracts would be totally baffling to a minority person who has not had legal training?

A Would you repeat the question again?

Q I am asking you if you think that questions in the area of labor relations, which were your primary duties when you were assistant to the Deputy Director -- I was asking whether those questions would be totally baffling to a minority employee who has not had legal experience or contact with the law?

A It probably is totally baffling to anyone who hasn't had some experience in that area; it doesn't matter whether a minority or not. It is an area which requires a lot of reading to keep abreast of new developments, and the like, so it does require some preparation.

THE COURT: It is sometimes baffling even when you have that experience.

THE WITNESS: Absolutely, your Honor.

Q Was the examination for supervising human resources

specialist which you took -- was that job related, even though it did not contain questions on labor relations and interpreting collective bargaining agreements?

A Well, first of all, at the time that I took --

THE COURT: What time are you talking about?

A At the time I took the examination I had no idea I would ever be working in labor relations. At the time I took the examination I was working in personnel.

Q Excuse me, you said at the time you took the examination --

MS. OMANSKY: Mr. Reporter, would you read the last answer, please.

(Read.)

Q Go ahead.

A So I wouldn't be anticipating any questions on any specific area of labor relations. That is not what I mean when I did the analysis of the examination. What I am talking about --

Q I think you answered my question. Do you know what a position evaluation request form is?

A Yes.

THE COURT: Is somebody going to let me know what it is?

Q I am going to hand you a document and ask you if that

is the position evaluation request form?

A Yes, this is a form DP-363.

(Defendants' Exhibit B was marked for identification.)

Q What is the requested title for that position?

A Do you want me to read from what you gave me?

Q Right from the document, yes.

A The requested title is "Supervising Human Resources Specialist."

Q What did they do?

A This employee is in legal.

Q The employee's name is Cynthia Rountree. Do you happen to know her?

A Yes.

Q Is she a law school graduate?

A Yes.

MS. OMANSKY: She worked with me when we were on the same side.

THE COURT: What is the purpose of the position evaluation request? What is the purpose of the form?

THE WITNESS: The purpose of the form is to request from the New York City Department of Personnel an evaluation of a position within any New York City agency on the basis of the information that is submitted to the agency.

The information that is submitted has to do with the specific duties and responsibilities of the individual who eventually fills that position upon approval by the City Department of Personnel.

THE COURT: It is a city department of personnel description?

THE WITNESS: Yes.

THE COURT: The city evaluates it. What do they do, approve or disapprove?

THE WITNESS: They send it back and give us a position number, and they say, "This position, as requested by DP-363 submitted," et cetera, "has been evaluated as requested as Sup. HRS," or "has been evaluated as HRS." It could be clerk.

THE COURT: They either agree or not. If they don't agree, they tell you what it should be?

THE WITNESS: Exactly.

Q Would you look at page 2 of the document? Well, I would like you to read it.

A "Under general direction of the general counsel, performs various legal assignments within the HRA legal department" --

THE COURT: Ladies and gentlemen, I don't know whether the reporter is able to keep up with you in your reading,

but you both are excellent readers. Read more slowly. Also if you do I can absorb it a little better.

THE WITNESS: Okay.

A (Reading): "Under general direction of the general counsel, performs various legal assignments within the HRA legal department, specifically responsible for negotiating and drafting of contracts for HRA central and its constituent agencies; evaluation and preparation of legislation; perform legal research on a variety of problems; prepares legal opinions regarding internal HRA matters; advises delegate agencies on contract compliance and their duties in the systems of accountability; presides at hearings as directed and counsels delegate agencies regarding legal problems."

Q Is this properly a job of a Supervising Human Resources Specialist?

A To my knowledge, information and belief this position was not approved for Cynthia Rountree simply because of the fact that legal experience, duties and responsibilities which she performed do not come under the Sup. HRS, for one of the examinations, as a matter of fact, was a first Sup. HRS examination which we specifically -- not "we," but New York City Department of Personnel specifically excluded attorney as an eligible experience.

Prior to that time, prior to the first examination, your job specialist, city department personnel specification, did allow attorney experience to be acceptable against the Sup. HRS examination, but in this case, upon information and belief, I believe that she was never classified in that position and she no longer works in the agency as a result of that classification.

Q Would you say that the experience requirements for Supervising Human Resources Specialist are pretty broad? I mean, I got the impression that at one time it was possible even that an attorney would fit into it.

A Precisely. As a matter of fact, that is why we are talking about parentheticals, because the Sup. HRS classification is a generic title. It is very broad and includes things like urban experience, about 20 things. That is why the intention of the city department of personnel was to create these parentheticals so you wouldn't have an examination that would attempt to cover all of these specialities.

And, you are right; legal experience was once admissible, and it might have been during this period -- I am not sure -- during the period when this DP-363 was submitted.

Q Now, getting back to your second affidavit, which you

have in front of you still, you state on page 5 that "The job related examination" -- and I assume you mean the supervising human resources specialist?

A Yes.

Q -- "should have been assembled and administered by occupational disciplines as originally intended and originally administered." Is that correct?

A Yes.

Q Would it be the first examination for Supervising Human Resources Specialist in 1968 tht was assembled and administered by occupational discipline?

A Upon information and belief it was assembled and administered by occupational categories.

Q The test examinations are presented --

A I have no opinion as to the validity of that examination. I have never seen that examination.

Q Could you look at the notice of the examination --

MS. OMANSKY: And I would like this marked as a defendants' exhibit.

(Defendants' Exhibit C was marked for identification.)

MR.HOWARD: May I see it?

MS. OMANSKY: Yes.

THE COURT: What is the date of that?

Is that a notice of a prior exam?

MS. OMANSKY: Yes, this is a notice of examination dated December 4, 1968, examination No. 7114 for the position of Supervising Human Resources Specialist.

Q I would like you to look at that notice of examination as somebody experienced in personnel and familiar with the various forms. I would like you to tell me what kind of an examination it was.

A What kind of an examination?

Q Was it a written examination?

A I don't know.

MS. OMANSKY: Well, I will withdraw it.

A I don't see anything that --

MS. OMANSKY: Okay; I will withdraw that question.

Q You did state that the reason the specialties were created was to avoid the problems of giving a generic examination; is that correct?

A That would be all inclusive --

Q Yes, all inclusive.

A --of the several specialties, yes, I did say that.

Q Would you look at the top of the left-hand column and read the paragraph in heavy type -- well, I will read this paragraph to you.

THE COURT: If you mean to bring this to the at-

tention of the Court, it seems to me it ought to be in evidence. Is there any reason why it shouldn't be?

MR.HOWARD: I have no objection.

THE COURT: I don't know what its relevance is at this moment, and I will admit it subject to connection.

Proceed on that basis.

Without a jury you are free to argue at any time, gentlemen and ladies, that the evidence has not been connected, or is not relevant.

(Defendants' Exhibit C was received in evidence.)

THE COURT: What is it you are reading?

Q I would like you to read the second paragraph in heavy type at the top of the left-hand column, "The terms and conditions." It begins "The terms and conditions."

A "The terms and conditions for specialties are for this examination only."

Q Do you think that is at all inconsistent with the statement that the reason specialties was created was to avoid future problems?

A No, the only reason that statement was put in there was to eliminate people who didn't work in the Human Resources Administration. What we did was put it in an examination only. We didn't do it; the City Department of

Personnel, I guess in agreement or in conjunction with HRA, put that statement in there because we disallowed any experience which was not coming from the agency.

For example, in this statement it says you have to have six months anti proverty experience. The only way you could have that was to work in the Human Resources Administration. That is why it was in there. It was only for the purpose of the examination.

Q You say the purpose of this experience in the specialty was to eliminate people who were not working in the Human Resources Administration?

A No, I didn't say that. I say this statement was put in to allow people to take the examination, only those people within the agency take the examination. What happens, what follows this statement, somewhere in the body here there is a statement which says you have to have six months anti poverty experience. That first statement is put in there to clinch it and it was only for this examination that this statement appeared. After the examination, provisionsals were hired without the six-month experience.

Q On other words, the particular experience was very important for the people taking the examination; is that correct?

A I beg your pardon?

Q The actual experience for people taking this examination would appear to be very important?

A You mean anti-poverty experience?

Q Yes.

A Yes.

Q Was that the reason, perhaps, that they created the specialties for this examination only, to make sure that only people in the agency could take the examination?

A I don't think so because that statement was not used in the last examination, to the best of my knowledge. We did not have a statement in there saying you had to have six months experience. I mean, the examination and the issue here did not have that statement. This was a prior examination. This is a notice from a prior examination, I believe.

Q This is the first one?

A Yes. And we did include a statement saying you had to have six months experience. That was put there to allow the people with any agency to take the examination, that's correct, but that is not true of the second examination, the examination in issue here.

Q What is your permanent civil service title?

A Senior human resources specialist.

Q Did you take an examination for that title?

A Yes.

Q Were you appointed from an eligibility list?

A Yes.

Q Were there parentheticals for that generic title?

A I don't think so.

Q You don't think what?

A I don't think there are parentheticals for the senior human resources specialist.

Q You are pretty sure of that, aren't you?

A I am virtually sure.

Q Is it possible that two people in the position of supervising human resources specialist could do entirely different jobs?

A Absolutely, yes.

Q How many different jobs could they do?

A I guess as many as there are job specialties. It is probably unlimited. No, there is a limited number. It has to be limited to these eligibles listed here in the examination or the ad itself or the eligibility list, whatever it is called, for provisional appointments.

I would say that it perhaps includes more than 20 categories or 20 specialties which could come under the generic of supervising HRS, so it is limited to what's listed here.

THE COURT: When you say listed here what are you referring to?

THE WITNESS: I am referring to either a notice of examination for the title of supervising human resources specialist or a notice of requirements for the job of supervising human resources specialist, the job description.

BY MS.ONANSKY:

Q In your affidavit, Mr. Jones, you said that the first 25 questions were relevant to all of the disciplines, is that correct?

A I qualified that by saying the first 25 questions,assuming that there is no problem with construction.

Q Okay.

A Which the expert would probably testify I said, assuming there is no problem with construction, that these 25 questions, it appears to me, are related to the specialty of management.

Q Were those questions, the first 25 questions,

largely in the area of supervision? If you would like to look at the exam you may.

THE COURT: I think it would be more sensible to answer the question on the basis of fact rather than recollection.

A If I made an answer it would be on the basis of recollection.

THE COURT: Let's let you look at the exam itself, and then let you answer it.

(Pause.)

MS. OMANSKY: He was speaking from memory before.

THE COURT: May I make the suggestion we take a ten-minute recess at this time?

MS. OMANSKY: I think I will be through in one question.

THE WITNESS: Would you repeat the question again?

THE COURT: Repeat the question, Mr. Reporter.

(Question read.)

A Yes, I would say that they were largely in the area of supervision.

MS. OMANSKY: Your Honor, I realize I just

said that I would be through, but I have changed my mind. I won't say it is a woman's prerogative.

THE COURT: It is a lawyer's prerogative, up to a point.

All right, we will take a ten-minute recess.

(Recess.)

BY MS. OMANSKY:

Q Mr. Jones, I think we had established that you had stated that the first 25 questions on management were related to all the disciplines or specialties, and that those 25 questions were supervision.

In your direct testimony did you say that there was in fact no need for all people to supervise?

A That is absolutely correct. The job specification does say that you can supervise or you cannot. You may or you may not specify. That is correct.

Q But nonetheless these questions were job related to all disciplines?

A I would say they were job-related with respect to those people who supervised someone. For those people who didn't supervise it wasn't job-related.

Q I thought you said that the questions on management were relevant to all disciplines. Didn't you say that in your affidavit?

A Yes, I said the category of questions on management should be included on any examination on any of the parentheticals given in any examination. That is not to say that the questions themselves were job-related or relevant. I simply said that they should be included or that is what I meant.

Q When were you appointed a provisional supervising human resources specialist?

A Appointed provisional supervising human resources specialist in April, 1971.

Q Were you appointed to the generic title or to the specialty?

A The generic title. In the appointment processwhat we did was evaluate the person, "we" meaning my unit and myself responsible; we evaluated the person on the basis of the experience that he brought with him. For example, I could have never sent myself to fiscal, I would have always gone to personnel or any of the other areas where there is policy decision or management experience required.

Q So you assigned these people, you say, to the relevant specialties?

A Yes.

Q Were they appointed in specialties or were

they appointed in the generic title?

A In the generic titles. What we did was --

Q I think I understand. I just wanted to know if they were appointed in the generic titles.

A Yes.

THE COURT: Let me get this straight. You people both know the subject quite well. You are telling me that you were appointed to a generic title, and I gather others were, but is it also the fact that some were appointed to parenthetical titles?

THE WITNESS: Absolutely. Some people were appointed to parentheticals, or we did it mostly on the basis of how quick it was, how swiftly we could get a person on the payroll, and that meant if we had a supervising human resources specialist,auditing title in the budget, then of course we appointed a person to that title rather than supervising HRS. In a case we created a title such as public affairs, and that required a budget modification and also took more time.

We tried to stay away from that kind of a process. But in those cases where the title actually existed we appointed people to those parentheticals.

THE COURT: Will I be informed during the course of the trial, if it is relevant, as to what per-

centage of the people in the supervising title are on the generic basis and what percentage are parentheticals?

MS. OMANSKY:

Q Perhaps, Mr. Jones, you can tell us how many people you appointed to specialties?

THE COURT: Can you estimate?

A It's over a period of five years. It was a small number. It wasn't over 300 or 400.

THE COURT: Can I get some idea of the scope of the numbers of people we are dealing with here?

During the last two or three years approximately how many supervising HRA specialists, provisional or permanent, have there been holding that title at one time?

THE WITNESS: I think we might have some figures in some of our papers submitted. I can't recall them offhand, how many professionals, how many permanents. I probably could get that information.

THE COURT: I will ask counsel to please either supply me with that information if it is not in the record or point out to me where it is.

I would like to know, assuming that the issue that we have been dealing with here this morning is

agreed on both sides to be relevant, what portion of those people have been generic supervising HRA and what percentage have been parentheticals.

Q Mr. Jones, do you know when the eligible lists that were established from the first supervising human resources specialist exam -- do you know when those eligible lists were exhausted?

A To the best of my recollection, it was within the past year. That would be 1973 I am referring to.

Q If there were eligibility lists in existence until 1973 for the specialties couldn't you have appointed somebody to a provisional position in a specialty?

A Yes, and we do.

Q Wouldn't that be a violation of the civil service law, there were eligibility lists in existence?

MR. HOWARD: Objection.

THE COURT: I think that is asking for a legal conclusion which you are free to argue, but he is not yet, until he graduates from law school, eligible to answer.

MS. OMANSKY: I have to disagree because he was in fact very much experienced in personnel and with hiring. I think he went through that in great detail. This is the type of knowledge he ought to have,

as to whether or not there was an eligibility list in existence.

THE COURT: If it is a matter of law it seems to me it is for the lawyers to argue. If you are questioning him to find out his skills, that is another matter, but I don't assume that is the purpose for your question. Is it? Do you disputethe proposition? Do you dispute it would be a violation of law to appoint provisionals if there were people on the eligible list?

MR. HOWARD: I made an objection to the question and your Honor sustained the objection. Also, I don't see what the relevancy is in terms of the question, in any event, and I don't know this is the proper time for argument by counsel on this issue.

THE COURT: That is helpful.

Let's assume for a moment it is a violation of law, subject to such development as is necessary on that point, and ask any questions you want on the basis of that.

BY MS. OMANSKY:

Q I might ask you, Mr. Jones, in your evaluation of people and personnel forms, was it of concern to you whether or not there was an eligible list in existence?

A No, I was never at that level where I had to make a decision on whether a number of people are hired or whether they were not hired. I simply was more or less in the second level of management where I took the order to hire and I did the necessary things required to put the person on the payroll as swiftly as possible.

Q But you testified you were very much aware of the existence of specialties and you carefully assigned people?

A Yes.

Q And it never occurred to you whether or not there was an eligibility list in existence?

A I never had to make a decision as to whether or not there was an eligibility list in existence and couple that with the fact that I was hiring provisionals.

MS. OMANSKY: I have no further questions.

THE COURT: Mr. Howard, I think Ms. Omansky has finished her cross examination. Do you have any further questions.

MR. HOWARD: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. HOWARD:

Q Mr. Jones, I ask you to look at this document

and tell me if you are familiar with it?

A Yes. This is a copy of the collective bargaining contract between the City of New York and the Social Services Employee Union, Local 371. This is a document of which I previously testified.

Q Does that document contain any reference to civil service titles?

THE COURT: He can find it, but if you want to bring it to my attention, assuming it is relevant, I think it ought to be put in evidence and just point it out.

MR. HOWARD: I offer in evidence as plaintiffs' next exhibit a document which is the fourth collective bargaining agreement between the City of New York and certain specified unions.

(Plaintiffs' Exhibit 5 was marked for identification.)

THE COURT: Do you want to look at it, Ms. Omansky? I would be inclined to say subject to connection I will accept it in evidence. What it proves remains to be demonstrated.

MS. OMANSKY: No objection.

(Plaintiffs' Exhibit 5 was received in evidence.)

MR. HOWARD: This contract covers, among the

titles in question, supervising human resources specialist, supervising human resources specialist (management), supervising human resources specialist (community programs), supervising human resources specialist (manpower development and training), supervising human resources specialist (auditing), and supervising human resources specialist (public affairs).

THE COURT: On what page is that?

MR. HOWARD: That is on page of the contract, your Honor.

BY MR. HOWARD:

Q Do those titles relate to the parentheticals about which there has been testimony here?

A Yes, those are the parentheticals to which I have been testifying and that contract means that union is the representative for purposes of collective bargaining for those titles.

Q Would it be a correct statement based upon your experience to say, Mr. Jones, that the parenthetical titles in question were not created solely for the purpose of the examination given in 1968 to which defense counsel referred?

A That is correct.

MR. HOWARD: I have no further questions.

RECROSS EXAMINATION

BY MS. OMANSKY:

Q Mr. Jones, do you know whether any examinations were given for supervising human resources specialists in the specialty of auditing?

A To the best of my recollection, there has never been an examination for that title. We have a number of professionals in that title.

Q What about public affairs? Do you know whether or not an examination had been given for the specialty of public affairs?

A To the best of my recollection, there has been no examination given for the supervising human resources specialist (human affairs), though there are provisionals in that title within the agency.

Q If there had been examinations given for the position of supervising human resources specialist in the specialty of auditing, would that mean, to your knowledge, that there were provisionals in fact serving in the specialty rather than in the generic title? Do you understand the question?

A No, I don't understand the question.

THE COURT: I understand the question, but since it is based on a hypothesis which apparently has

not occurred, or at least --

MS. OMANSKY: That is what Mr. Jones testified to. In fact, it is wrong.

THE COURT: Well, then, based on some connection I will allow the question. Will you read the question back, please, Mr. Reporter, and if the witness doesn't understand we will have to rephrase it.

(Question read.)

A Yes, I suppose the answer is, if I understand it correctly.

THE COURT: Let's be sure we understand it. Your question means this, as I understand it: In Mr. Jones' experience, or as far as he knows, when an exam is given with regard to a parenthetical specialty does that mean that there are provisionals serving in that specialty?

MS. OMANSKY: Exactly, your Honor.

A Yes. That would be the case in all of these parentheticals, there would be provisionals serving in those titles in the event an examination is given.

Q And if an examination were given for the position of supervising human resources specialist in the generic title, would that mean there were persons serving in the generic title?

A For the most part, all supervising human resources specialists are serving in a generic title. The reason for that is there is a budgetary restraint. It requires changing the budget. Itwas easier to get them on generically, and that was the reason more than any other.

It is also the reason why the chief of personnel processing and control and his staff had to do the extra work defining where the experience was located and putting them in the best-suited unit according to the experience they brought withthem.

MS. OMANSKY: No further questions.

MR. HOWARD: No further questions, your Honor.

THE COURT: Thank you, Mr. Jones.

(Witness excused.)

A N D R E W P. J A C K S O N, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOWARD:

Q Mr. Jackson, by whom are you employed?

A Human Resources Administration Agency for Child Development.

Q What position do you hold there?

A Coordinator of personnel.

Q Do you have a title?

A Provisional supervising human resources specialist.

Q How long have you been employed by the Human Resources Administration?

A Since 1968, November.

Q Would you indicate for us what positions you have held since being employed by the administration?

A Upon entry into the Human Resources Administration I was hired as a supervising clerk initially. Three months later I was put in the correct title of senior human resources technician, and in April I think of the next year, 1970, I was promoted to the title of human resources specialist.

I remained in that position until October of 1970, when I was promoted to senior human resources specialist. I remained in that capacity until December of 1971, when I was transferred to the Agency for Child Development as a supervising human resources specialist.

THE COURT: As a provisional, is that right?

THE WITNESS: Yes, provisional.

BY MR. HOWARD:

Q Mr. Jackson, would you indicate for us briefly your educational background?

A I attended elementary School 127 in East Elmhurst, Queens. The same school for junior high school, which is a combined school. And then Forest Hills High School from 1960 to 1964. Upon graduation from high school I enlisted in the United States Air Force, attended Florida State University on base courses from 1965 to 1966, and then upon being discharged from the United States Air Force attended Bernard Baruch College from 1969 through 1971.

THE COURT: Did you earn a degree there?

THE WITNESS: No.

Q Would you indicate the nature of the courses that you took while attending Baruch College?

A Mostly management courses.

Q Now, Mr. Jackson, would you describe what your duties consisted of when you held the title of provisional senior human resources specialist?

A I was assistant supervisor of the personnel processing and control unit in HRA personnel.

Q What did you do? Tell me what you did in that job.

A I was responsible for the everyday operation of the office, the personnel record section, processing of personnel actions, processing of applications, budget control files, manning tables, etc.

Q You have laid out several terms but could you tell us in more detail what you did?

A We processed applications, appointments, transfers, merit increases, terminations of all personnel, actions for constituent activities of the Human Resources Administration.

Q What was involved in this kind of processing?

A The first step was to process it to city personnel for employment, and also to the payroll section for payroll.

Q Did the duties involve the preparation of any kinds of documents or papers?

A Yes.

Q What kinds?

A DP69s.

Q Will you describe what that form might be?

A The DP69 is the initial form filled out with the personal background and educational background of an applicant.

Q Then there were other documents?

A Yes, the resumes which we filed. The personnel records included the resume, DP69, the application form, etc.

Q Did there come a time when you moved to other duties within the administration?

A Yes. The next step from the assistant chief was chief of the processing and control section in the same unit.

Q When did that occur?

A When they had a reorganization in the agency about 1969 or '70.

THE COURT: You mean you were the chief of processing?

THE WITNESS: Yes.

Q What title did you hold at that time?

A Also senior human resources specialist.

Q Provisional?

A Provisional

Q For how long a period of time did you perform those duties?

A From October, 1970 through December, 1971.

Q Was that as the chief of processing, as you have indicated?

A Yes.

Q Upon assuming that responsibility, did it involve any change or additions to the duties that you have already outlined?

A Yes, the added function of budget was assigned to that unit, and we processed budget modifications to the Bureau of the Budget, and to the Department of Investigations.

Q Did you do these things?

A I supervised them as well as doing them.

THE COURT: Your experience sounds as though it was very similar to Mr. Jones, is that correct?

THE WITNESS: Yes, sir.

THE COURT: I just want to make sure I am beginning to get this.

BY MR. HOWARD:

Q Go ahead.

A We did processing to the Bureau of the Budget, as well as getting clearances from the Department of Investigation.

Q You have testified that you at the present time are assigned to the Agency of Child Development, is that right?

A Yes.

Q When did that occur?

A December of 1971.

Q Are you again at the present time still at the same agency?

A Yes, I am.

Q Will you describe the nature of your duties?

A I am responsible for the overall administration of the personnel function within the Agency for Child Development.

Q Will you set forth in detail what the overall administration means?

A It entails supervising the functions of timekeeping, personnel records, qualification of city personnel, any investigation clearances that have to be secured, processing of all that; and hiring through termination, transfers, leaves of absences, dealing with the DSS Department of Personnel as well as City Department of Personnel --

THE COURT: What is DSS, Department of Social Services?

THE WITNESS: Department of Social Services, personnel liaison between the two agencies.

It also entails maintaining accurate personnel records, manning tables for the agency, position control files.

Q You oversee all of these jobs?

A Yes.

Q Mr. Jackson --

THE COURT: How many people are in that Agency for Child Development?

THE WITNESS: There are approximately 430 employees in the Agency for Child Development.

THE COURT: How many people work under you as to

slbr 2 jackson-direct

personnel?

THE WITNESS: Nine.

BY MR. HOWARD:

Q Is that nine?

A Nine.

Q Mr. Jackson, did you in October of 1972 take an examination entitled Examination No. 2103, open competitive supervising human resources specialist?

A Yes, I did.

MR. HOWARD: Your Honor, may I offer that examination or a copy of it in evidence?

THE COURT: That is not the examination we were talking about before, 1631, is it?

MR. HOWARD: That is right.

Do you have any objection?

MS. OMANSKY: To the exam?

MR. HOWARD: Yes.

MS. OMANSKY: No.

MR. HOWARD: I offer it.

MR. OMANSKY: Mr. Howard, will you enumerate the documents.

MR. HOWARD: Yes.

Again, your Honor, there is the examination, and there is also the notice of examination, and there is a job

description and the key answers to the examination.

THE COURT: I would like to have them marked 6, 6-A, 6-B and 6-C, Ms. Clerk.

The notice of examination will be 6-A; the job description will be 6-B and the test key is 6-C.

(Plaintiffs' Exhibits 6-A, 6-B and 6-C were received in evidence.)

MS. OMANSKY: May I take a look at these, please?

MR. HOWARD: Yes.

(Handing.)

THE COURT: All right, Mr. Howard, go ahead now.

BY MR. HOWARD:

Q Mr. Jackson, when did you become aware of the fact that Examination No. 2013 would be given?

A It was about in the spring of 1972.

THE COURT: I think the question was when you learned when it was to be given.

THE WITNESS: Yes. Approximately the spring of 1972.

Q Did you ascertain what the eligibility requirements were to take that examination?

A Yes.

Q Did you subsequently take the examination?

A Yes, I did.

Q Did you pass the examination?

A No, I did not.

Q Were you advised of what score you had attained on the examination?

A Yes, I was.

Q What was the score?

A 48.8.

Q Was there a so-called passing score for the examination?

A Yes, there was.

Q What was that score?

A If I remember correctly it was 70 percentile.

THE COURT: May I ask, Mr. Jackson -- I am sure there is a good explanation for it -- how did you happen to take 2013 rather than 1631?

THE WITNESS: My permanent civil service title is Human Resources Specialist. You had to have been a permanent Senior Human Resources Specialist to take the promotional exam to Supervising Human Resources Specialist.

THE COURT: In other words, you were not eligible to take 1631?

THE WITNESS: No, I was not.

Q Mr. Jackson, based upon your experience in the Human Resources Administration, as you have outlined it,

do you have an opinion as to whether or not the examination which you took was related to your duties as Provisional Supervising Human Resources Specialist?

A Yes.

Q What is your opinion?

A Based on the examination I wouldsay only about 25 questions of the entire exam were relevant to my job function.

Q In what area were those 20 to 25 questions?

A Management.

Q Well, didyou feel that those questions dealing with management related specifically to the kinds of management functions and responsibilities that you had been discharging?

A No. Being specific I would say they would be relevant to my job function in theory, not in practicality.

Q What is the basis for that opinion?

A The questions were more of a theory nature, management theory that you would either pick up in school or that you would pick up in certain management areas, not specifically in personnel or specifically labor or anything else, but they were not specific enough to be personnel related from my experience.

Q And you had been with the Administration at the time of your examination in excess of four years, is that right?

A Yes.

Q All of your duties had been in the area of personnel?

A Yes, they had.

Q Now Mr. Jackson, has your work been evaluated by supervisors since you have been with the HRA?

A Yes, it has.

Q Do you know the nature of those evaluations in terms of whether they have been satisfactory or unsatisfactory?

A They have been satisfactory.

Q You have never received any unsatisfactory rating?

A No.

Q Have you ever been demoted, shall we say, in position?

A No.

Q You have been customarily given increased responsibilities, is that correct?

A Yes.

MR. HOWARD: I have no further questions of this witness, your Honor.

THE COURT: All right.

CROSS EXAMINATION

OF MS. OMANSKY:

Q Mr. Jackson, is there a co-plaintiff in this suit named Charlotte Jefferson?

A Yes.

Q Is she in the specialty of management?

A She is not in the specialty. She is a provisional supervising human resources specialist.

Q I see.

She was not assigned to a specialty, is that your answer?

MR.HOWARD: I am sorry, I cannot hear you.

MS. OMANSKY: I am sorry.

THE COURT: Charlotte Jefferson?

Q Charlotte Jefferson - she was just a supervising human resources specialist?

A Yes.

Q You don't know that she was assigned to a specialty?

A She was not assigned to a specialty.

Q She was assigned to a generic title?

A Generic title, human resources specialist.

THE COURT: When we are talking about specialty, Mr. Jones was talking about parenthetical titles; that is the

same thing, is that right?

MS. OMANSKY: Yes, parenthetical specialties and occupational disciplines I think I used interchangeably in this case.

THE COURT: If we could stick to one thing, it would be easier.

Q I asked your counsel to answer some interrogatories to me, and in the answer to interrogatories they said Charlotte Jefferson was in the specialty of management, but that is neither here nor there.

I am going to hand you --

THE WITNESS: Would you repeat that so I can be sure of what you said?

MS. OMANSKY: Oh, I am sorry.

Mr. Reporter, will you read that back, please?

(Last question read.)

MR. HOWARD: Your Honor, may I ask, for the purpose of clarification, was that colloquy or was that a question that has been asked?

MS. OMANSKY: No, that was just an explanation.

THE COURT: I think Ms. Omansky was impliedly trying to explain why she asked the question.

MS. OMANSKY: Yes.

I just handed Mr. Jackson a copy of Charlotte

Jefferson's affidavit.

Q I would ask you to look at page 2 of that affidavit --

THE COURT: Is that an affidavit that was submitted along with the others?

MS OMANSKY: Yes.

Do you have it?

THE COURT: Yes, I have it. If you will give me a moment I will find it.

All right.

Q Now, Charlotte Jefferson says that she is a special assistant to the Commissioner, and I think that is one of your agencies; I think it is the Agency for Child Development, is that correct?

A Yes.

Q She says as a plaintiff in this lawsuit that she is a supervising human resources specialist; that is correct, isn't it?

A Yes.

Q Would you tell me, by looking at the description of her duties what you do in common with Charlotte Jefferson in the course of your job and in the course of her job as set out in her affidavit?

A In the course of Ms. Jefferson's job I confer with her on personnel matters. That is it.

Q Is there anything in her affidavit which indicates that she is responsible for keeping personnel records and manning tables and time cards, et cetera?

A No.

Q Both of you are supervising human resources specialists, is that correct?

A Yes.

Q Both in the specialty of management?

A Yes.

Q Mr. Jackson,is it your opinion, based at looking on her duties, and knowing what your duties are, that the position of supervising human resources specialist is a very broad title?

A It is very broad.

Q You said that you were not eligible to take the promotional exam to supervising human resources specialist because you were not eligible and you were not a permanent senior human resources specialist, is that correct?

A Correct.

Q Did you ever take an exam for senior human resources specialist?

A I did.

Q Is this the notice of the exam thatyou took? It is examination No. 7112, Senior Human Resources Specialist.

A This is the job specification for the position, for the title of Human Resources Specialist.

MS. OMANSKY: I would like to offer thisin evidence.

(Defendants' Exhibit D was marked for identification.)

THE COURT: Do you want to state for the record what it is?

Do you know what this is?

THE WITNESS: This is the job specification the title of Senior Human Resources Specialist No. 7112.

Q And is that the exam you took?

A Yes.

Q Did you pass that exam?

A No.

Q Do you know what your score was on that exam?

A I don't remember what the score was.

Q It says at the bottom of the second column that the pass mark on the written test willbe the score of the candidate who ranks 500th in the order of comparative rating --

A Where are you reading that?

Q At the bottom of the second column.

THE COURT: After the word "tests."

A Yes?

Q If you fail that test is it fair to say that you ranked below No. 500?

THE COURT: I don't think it is a question of is it fair to say. If we believe what this document says there is no doubt about it.

MS. OMANSKY: I would like to offer that in evidence.

Is there any objection?

MR. HOWARD: No objection.

THE COURT: All right, mark it in evidence.

(Defendants' Exhibit D for identification was received in evidence.)

BY MS. OMANSKY:

Q Mr. Jackson, you gave a description of your present duties in Personnel, the types of functions, and I am not going to repeat that. I will take what you said as accurate.

Do you need anti-poverty experience to do personnel work?

A Not as a general rule, no.

Q I suppose any clerk in the city or whatever the appropriate grade is could do that type of work?

THE COURT: Which type of work?

Q Personnel work, which you do.

A You asked me if a clerk could do my job?

Q A person who has experience in personnel work in the city rather than in the Human Resources Administration.

In other words, you have the title of Provisional Human Resources Specialist, and you do personnel work?

A Yes.

Q And there is really no anti-poverty experience that is necessary to do that work? Is that correct?

A Yes.

Q Is it possible that somebody who is not in the occupational field of Human Resources Specialist could do this work but who was experienced in personnel work in other civil service categories? Do I make myself clear?

A I think you are.

Q It is possible they could do this work?

A It is possible.

Q How many people did you supervise?

A Do I supervise now or did I supervise in the other function?

Q Now.

A Now? 9 people.

Q Would the questions on supervision be relevant to your

present position?

A They would be.

THE COURT: Questions on supervision?

MS. OMANSKY: On supervision, yes.

I have no further questions.

THE COURT: Any further questions, Mr. Howard?

MR. HOWARD: No.

THE COURT: Thanks very much.

(Witness excused.)

THE COURT: We will break for lunch now, ladies and gentlemen.

Return at 2 o'clock.

(Luncheon recess.)

AFTERNOON SESSION

(2:00 p.m.)

THE COURT: I think we are starting with a new witness, are we not?

MR. HOWARD: Yes, your Honor.

Mrs. Eccles.

M A R Y J. E C C L E S, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOWARD:

THE COURT: Is that Miss or Mrs.?

THE WITNESS: Mrs.

Q Mrs. Eccles, where are you employed?

A I am presently employed for the Human Resources Administration Agency for Child Development.

THE COURT: That's the same as Mr. Jackson, right?

THE WITNESS: Yes.

Q How long have you been employed by the Human Resources Administration?

A Since October of 1968.

Q Would you outline the positions that you held, the titles that you held, with the administration since

1968 to the present time?

A I was first employed as a consultant with the project Head Start.

Q When was that?

A October of 1968.

Q Go on.

A In June or July of 1969, to the best of my knowledge, I became a provisional senior HRS. I took the examination in December of 1969.

THE COURT: That is to become a permanent?

THE WITNESS: Yes.

A And I was made a permanent senior HRS in October of 1970.

Q You passed that examination?

A Yes, I did.

Q Go ahead?

A I was employed as a permanent senior HRS up until December of 1970 when I became a provisional principal human resources specialist.

THE COURT: Provisional principal?

THE WITNESS: Right.

THE COURT: That is something new. What's that? New to me, I mean.

THE WITNESS: It's the next classification

of supervisor.

THE COURT: Above it?

THE WITNESS: Right.

A I held that position --

Q Would you briefly outline the positions from HRS through the highest title?

A I am not an expert, Mr. Jackson is, in terms of personnel, but in that particular HRS series we do have the senior human resources technician, there is also the senior human resources specialist, the next step I believe is that of the supervising human resources specialist, and the step above that is the principal human resources specialist.

THE COURT: Thank you.

Q And you were so provisionally pointed in November of 1970 to the principal position?

A Yes.

Q Will you continue?

A I held that position up until February of 1972 when I transferred to the Agency for Child Development and was appointed as a parent coordinator.

Q At the time of that transfer was there also a change in your title?

A Yes. I was then made a provisional supervis-

ing human resources specialist.

Q Do you still hold that position at the present time?

A No, I do not. I am not presently a provisional principal human resources specialist.

THE COURT: Doing the same work, though?

THE WITNESS: With the scope being somewhat broader than the first principal position.

Q Mrs. Eccles, would you outline for us your educational background?

A I attended elementary school in High Point, North Carolina, the Whittier Elementary school. I graduated from William Penn High School in 1948. I enrolled at Virginia State College in Petersburg, Virginia in September of 1948, and graduated with a B.A. degree in sociology in 1952.

In 1956 I was awarded a work study scholarship by the Department of Social Services, and matriculated towards my master's degree at the Columbia University School of Social Work, for one year, from 1956 to 1957.

In 1967 I returned to graduate school and did receive a full scholarship from the Columbia University School of Social Work. I received my master's degree

in 1969.

Q That was a master's degree in social work?

A Yes.

Q Would you describe your duties in the position of parent coordinator with the Agency for Child Development? What did that position entail in terms of what you had to do?

A In my position I am responsible for parent involvement in more than 500 pre-school programs that are operated and funded by the Agency for Child Development. There are three particular divisions under the Agency for Child Development, namely, group day care, family day care and the Head Start program. I have the overall responsibility for seeing that parents are involved in these three programs, that there are yearly elections in the 500 programs that exist.

I am also responsible for writing up election procedures, seeing that these are implemented. I supervise a staff of parent-involvement specialists at central office, and they indirectly give technical assistance to other employees out in our field units.

I also am liaison to the other parent involvement staff at central that do not work out of my unit but work in other departments providing technical

assistance to them.

I am also responsible for setting up a grievance procedure whereby parents can make complaints to the agency regarding concerns they might have about their chiildren or the program.

This entails work in a liaison capacity with our legal staff and with parents and other responsible board members from our community setting up reviews, making recommendations to the commission or the agency as to what action should be taken with a complaint that might come in.

In addition to that, I also was responsible for establishing the first Child Development Commission, and as such I am the liaison to the Mayor's office in the area of the Child Development Commission.

Q When you say "liaison," liaison between whom?

A From Commissioner McMurray's office to the Mayor's office.

Q Who is Commissioner McMurray?

A The commissioner of the Agency for Child Development.

I also serve as liaison to other federal agents, namely, the Department of Health, Education and Welfare, to the Community Action program, and to other

city agencies that the commissioner might feel I should be with.

Q When you say you are a liaison person, can you describe in some greater detail what that means? What do you do as a liaison person with the Mayor's office?

A I am responsible for providing the clerical and supportive work to this particular commission in terms of setting up regular meetings, getting out notices, etc.

In terms of the Mayor's office, there is a person there who is assigned to the Agency for Child Development as the Mayor's liaison to the ACD and I have contact with this person in the areas of concerns that they might have about the commission or some questions that we might have, meet occasionally with them, and on two occasions with the Mayor and the commission.

Q Mrs. Eccles, did you in October of 1972 take an examination No. 2013, entitled "Open Competitive Supervising Human Resources Specialist"?

A Yes, I did.

Q Did you also take an examination numbered 1631, entitled "Promotion to Supervising Human Resources Specialist"?

A Yes.

Q Were the examinations administered on the same day?

A Yes, they were.

Q Would you tell us how you were able to take both examinations?

A As I had been in my position as a permanent senior HRS I was entitled to take the promotional examination, and I had the right or the opportunity to take the open competitive just as anyone who was not eligible for the promotion could have taken the open competitive so I thought it was to my advantage to take both tests.

Q Do you recall whether there was any similarity in the questions on the respective examinations?

A Very much so. If I recall correctly, the difference being that with the promotion examination there were 10 additional questions to the 80 that we had on the promotional, but in terms of the content I would say that there was a great deal of similarity in the two tests.

Q So that in taking two examinations they weren't two wholly different and distinct in terms of questions?

A I would say no.

Q Did you achieve a so-called passing score for

either of those examinations?

A No, I did not.

Q Were you notified of what your score was on the open competitive examination?

A Yes.

Q Do you recall?

THE COURT: That's 2013, right?

MR. HOWARD: Yes, your Honor.

A My score was 65.

Q Were you notified of what your score was on the promotional examination, 1631?

A No, I was not.

Q You have not learned what your score was?

A No.

Q Were you advised that you had not passed the examination?

A Yes. When I did not hear from the city personnel and other persons were being called I did place a call there, as well as to our union, and was told my name did not appear on the list and it meant that I failed the examination.

THE COURT: I am a little confused, though. In Mr. Jones' case he also failed but did know his grade. What is the procedure for advising persons taking the

examination of their grade?

THE WITNESS: Normally, the procedure is that the person is so notified whether you passed or failed an examination.

THE COURT: Only that?

THE WITNESS: Right.

BY MR. HOWARD:

Q Incidentally, Mrs. Eccles, you have testified that at one time you held the title of provisional supervising human resources specialist, and that you held that title, for example, in February of 1972, is that correct?

A That's correct.

Q Do you recall what salary you were paid at the time that you assumed that title?

A As a provisional principal human resources specialist I was making $13,100 a year.

Q Is that as a provisional principal?

A Yes. As a provisional supervising human resources specialist my salary was $15,000 a year.

THE COURT: I am a little confused about that because I thought earlier, Mrs. Eccles, that you said that the principal's position was higher in rank than the supervising, or did I miss that?

THE WITNESS: No, that is correct, your Honor. The fact of the matter is that the provisional principal line that I held was in the managerial title, and when I transferred to the Agency for Child Development I believe I came in at the top of the supervising line.

THE COURT: I won't try to learn more of the mysteries of civil service than I need to.

BY MR. HOWARD:

Q When you were againappointed to a position as provisional principal human resources specialist did that involve a change in your salary?

A Yes, it did.

Q When did that change occur?

A In October, either the 22nd or the 29th of 1973.

Q What was the salary paid to you in that position?

A The salary was $18,500 per year.

THE COURT: And that's the position you now have?

THE WITNESS: Yes, sir.

Q Incidentally, was that appointment made after it was determined that you had not passed either of the examinations?

A No. This request had been submitted through the Office of Personnel, I believe in April of 1972, and the City Personnel had not classified the position up until, I think it was August of last year, but the request had gone in a year before on a recommendation from the Commissioner.

Q When were you advised and when did you first learn that you had not passed the examination?

A I believe it was either July or August of 1973.

Q And did your immediate supervisors also learn that you had not passed these examinations?

MS. OMANSKY: I object to the question.

THE COURT: Sustained. I assume that is hearsay.

MR.HOWARD: Yes.

Q Did you inform your immediate supervisors that yo had not passed these examinations?

A I believe I did.

Q Was your appointment to the position, your second appointment to the position of Provisional Principal of Human Resources Administration after the time you had informed your supervisors that you had not passed the exam, is that right?

A That is correct.

Q Now, Mrs. Eccles, based on your experience with the Human Resources Administration and the duties that you have described, do you have an opinion with respect to whether or not these examinations were related to the job which you performed?

A I would say in general that these questions were not related to the job that I performed as Director of Parent Involvement.

Q Would you be more specific?

A I think many of the questions were most ambiguous. In the multiple choices I find in analyzing the examination that many of the questions could have had either two or three answers. I thought that the questions were very subjective.

I also felt that the questions, many of them, were in the areas of research of what was in the news media, the newspapers; what acts had been passed by Congress, et cetera; questions that I did not feel were relevant to my job.

Q Let me ask you another question, Mrs. Eccles:

You have heard their testimony from five witnesses to the effect that their duties with the Administration was somewhat in the area of management, or managerial kinds of

functions.

Would you characterize your duties with the Administration as falling within that parenthetical or some other parenthetical?

A No, I did not feel that what I do in my job function is in the managerial line. I must agree that there were at least 20 or 25 questions that I thought also dealt very much with managerial questions, more theory than practical, but, nevertheless, in the area of management planning.

Q Do you again think that your job and the duties that you discharged falls within one of the kinds of parentheticals which have been testified to in terms of audit, in terms of the bedget, in terms of community planning, public affairs, and so forth?

A No, I would say in some degree in the area of community planning.

Q Mrs. Eccles, if you recall, did these examinations or either of them deal in any detail with the kinds of duties that one discharges in the area of community planning, the kinds of duties that you discharge in that area?

A I would say so.

I might add there might have been several questions, I can't recall, but there might have been several that dealt with community planning, and if I recall correctly,

there again the questions and the answers were ambiguous. More than one answer could have been appropriate.

Q Mrs. Eccles, is it a correct statement that the Human Resources Administration is subdivided into specific agencies, such as your agency, the Agency for Child Development, is that correct?

A That is correct.

Q Are there other agencies that fall under this umbrella?

A We have the Community Development Agency.

We also have Youth Services Agency.

We have the Manpower Development Agency and the Department of Social Services, which are all a part of the Human Resources Administration.

Q To your knowledge do these respective agencies have specific areas of responsibility, a specific task that they deal with, specific purposes?

A Right.

The Community Development Agency is primarily concerned about the development of the communities.

They are very much involved in housekeeping services, vendor services; very much concerned in terms of helping communities develop and grow, providing funds, and through community cooperation they have, I guess,

300 other agencies that operate out of the Community Development Agency.

In the Youth Service Agency, that is an agency that is primarily concerned wth the youth in the city, setting up programs that youth can be involved in, youth workers sent out into the community to work with gangs, et cetera.

The Department of Social Services is primarily concerned with providing funds to welfare recipients who are in need of welfare.

Q Does your job involved in any way dealing with the problems of welfare recipients?

A Not directly. Many of the parents who are in the Head Start and the other two programs do receive public assistance, but in my specific area I am not involved with them.

Q Is the Agency for Child Development concerned as a part of its responsibility for administering the welfare laws and regulations?

A No, I wouldn't say that.

THE COURT: Is the Agency for Child Development part of the Community Development Agencies, or is it separate?

THE WITNESS: It is a separate agency.

Q Is it also separate from the Youth Services Agency that you described?

A Yes.

Q And from the Manpower and Career Development Agency?

A Right. They are all special agencies.

Q Now Mrs. Eccles, if you recall, were there any questions on these examinations 2013 and 1631 dealing with the functions of the Agency for Child Development?

A To the best of my knowledge there was one question that dealt directly, primarily with the Agency for Child Development.

Q Was that one on each examination?

A I think it was just one. No. 2.

Q That was out of a total of how many questions?

A 90.

Q Has your work, as you have described it, been subject to evaluation by supervisors since you have been with the Human Resources Administration?

A Yes, it has.

Q And do you know whether those evaluations have been satisfactory or unsatisfactory?

A They were all satisfactory.

Q You had no unsatisfactory evaluations?

A No.

Q It is a fact, is it not, as you testified, that subsequent to your having not passed these examinations you were,in fact, appointed toa higher title, which you now hold?

A That is correct.

Q With a higher salary?

A That is correct.

MR. HOWARD: I have no further questions.

Your Honor, may I speak to my witness just for one second prior to cross examination?

THE COURT: I would rather you did not.

MR. HOWARD: It is a question of a phone number, your Honor. It does not relate to her testimony.

THE COURT: All right.

(Mr. Howard confers briefly with witness.)

MR.HOWARD: Thank you.

CROSS EXAMINATION

BY MS. LOREN:

Q Mrs. Eccles , what is your office title right now?

A My office title is Director of Parent Involvement.

Q And how many other persons are with the Director of Parent Involvement with ADA?

A How many other persons are in that title?

Q That is right.

A To my knowledge there is one person who has the acting position in the Head Start Program.

Q How many people do you supervise?

A At the present time, five.

Q Do any of these people hold the position of Supervising Human Resources Specialist?

A No, they do not.

Q Were you previously Associate Director of Parent Involvement with the ADA?

A Right.

Q During the course of your work as Director of Parent Involvement with ADA did you have anyone to interpret the OEO guidelines?

A Yes.

Q Could you tell me what OEO stands for?

A Office of Economic Opportunity.

Q Were you responsible for implementing OEO guidelines?

A Yes, I was.

Q In order to interpret and implement OEO guidelines were you required to read and comprehend them?

A Yes, I was.

Q And was reading comprehension a necessary part of

your job as associate director of Parent Involvement w. h ADA?

A Was it a necessary part?

Q Yes.

A Yes.

Q Is the reading comprehension now a necessary part of your position as director of Parent Involvement with ACD?

A It is not in my job function, but I think for anyone to function in that position you must be able to read and comprehend.

Q Mrs. Eccles, I am going to show you an affidavit that you submitted in this lawsuit. Do you recognize that, Mrs. Eccles?

A Yes, I do.

THE COURT: Will you wait until I can find my copy, please.

MS. LOREN: This is entitled "Second Affidavit of Mary J. Eccles in support of plaintiff's application for a temporary restraining order and a preliminary injunction."

THE COURT: Let's see. Sworn to September 11th.

Q Mrs. Eccles, is the ability to read consistent with the description of reading comprehension and vocabulary questions on the examination, which were

questions 41 through 50 as having "absolutely no relevance to the job I perform" --

THE COURT: I am confused, Miss Loren. Are you referring to the affidavit or not?

MS. LOREN: Yes.

THE COURT: Well, then refer --

MS. LOREN: I'm sorry. Page 3. There is an attachment at the end where Miss Eccles comments on the various questions.

THE COURT: Well, will you tell her and me the comment you are referring to.

MS. LOREN: Questions 41 through 58. Mrs. Eccles said --

Q Could you read that comment, please, Mrs. Eccles?

A Question 41 --

THE COURT: Just read it to yourself, and when you have finished reading it, tell us.

Q Do you recall what those questions tested for?

A This was in relation to the chart that was given on the test, a chart that I must say was incomplete in terms of the instructions that we were to follow, and I felt that learning charts and statistics, as I stated, was unrelated to my job. I had never been called upon to work on charts.

Q I am going to give you a copy of the promotional exam 1631.

Would you turn to questions 41 through 58, please.

Could you tell me what you think questions 41 through 50 would test, whether they would test chart reading?

A Definitely questions 51 through 55 are related to the chart that is on the above page, the two charts.

Q What about questions 41 to 50? Were they test reading comprehension?

A Yes.

Q Do you think that has any relevance to the job you perform?

THE COURT: I think she has already testified that she thinks that reading comprehension is a necessary ingredient for someone in her job, as it is to somebody in my job.

That last part is my testimony, not the witnesses.

Q Would you turn to question 15, please.

THE COURT: 15?

MS. LOREN: 15 on the examination.

Q In your affidavit on page 2 of that same comment on the questions that you say either of the two answers which you considered might be correct "could be discriminatory if the interviewer was not familiar with ethnic factors

that might be involved."

Could you explain that statement, please?

A I've read it.

What is your question again, please?

Q I was asking you to explain your statement that is attached to your affidavit that the answers to that question could be discriminatory if the interviewer was not familiar with the ethnic factors that might be involved.

A No. 1, I think if you answered A or D, as I refer to in the analysis, depending upon the nature of the interview, the person who is being interviewed , I think if you attempted -- that could be considered discriminatory in terms of how you might pose the question to a person if you are not aware of his ethnic background; but more than that, I think both of them, A and D could either be right or could be wrong. I think, therefore, the answers were somewhat inappropriate and somewhat subjective depending on how you felt about the process --

Q I am sorry.

Do you think it would be inappropriate for someone who wasn't in a minority as someone who was? I am trying to understand why they are discriminatory.

A I don't think you are using it in the same context as I used it when I made the statement. Depending upon

what background you are from, if you are going to summarize the feelings of a person or express them in terms of details and incidentals, one ethnic group might accept it, and a person from another ethnic group might be very perturbed over your summarizing what is being said, and that is what I meant about discriminatory.

THE COURT: Ladies, you are leaving me completely in the dark. I haven't the slightest idea what this question is all about or what the possible answers to it are.

MS. LOREN: I am sorry, your Honor.

THE COURT: May I have a copy of something to go by.

MS. LOREN: Yes (handing).

THE COURT: We are talking about No. 15?

MS. LOREN: Yes.

THE COURT: For the record, this is which test?

MS. LOREN: This is the promotional.

THE COURT: Now the question or statement is -- I want to be sure I have the right one --

"It is generally considered the best interviewer is the one in which the interviewer talks less than the person interviewed. One of the following which is an effective device to encourage the other person to talk during the interview is for the interviewer to (A) summarize

the feelings the person has expressed, omitting details and incidentals, or (d)" -- which is the other one to which Mrs. Eccles referred -- "talk" to the person in terms of concept rather than specifics."

Now, Mrs. Eccles, I do understand what you mean -- I am not expressing agreement or disagreement -- but I understand whatyou mean when you say either of those answers could be correct or could be incorrect.

I do not, I must say, understand just what you had in mind when you said that you thought that people from different ethnic backgrounds might have different reactions. I am afraid you will have to be a little more specific.

Could you try to explain what you mean?

THE WITNESS: Yes, your Honor, I will try again.

THE COURT: I am not saying you are wrong either. You tell me where you think that people with your background or my background might reach a different result with regard to the questions.

THE WITNESS: I think it was my belief that in order to answer A or D I think the statement was I felt they were both discriminatory if the interviewer was not familiar with the ethnic factors that might be involved.

THE COURT: Yes?

THE WITNESS: Okay. If we look at No. 1 I would daresay --

THE COURT: You mean A?

THE WITNESS: A, I am sorry --

THE COURT: Yes?

THE WITNESS: That if a black person is being interviewed and his feelings are being summarized in terms of what he is saying, I would think that this might tend to be discriminatory in terms of how the person felt.

Again I say that this is all very subjective, this entire question.

I think also in terms of D, that that in itself could be a discriminatory factor if you are going to talk to a person in concepts rather than in specifics.

I would have no problem with someone summarizing what I might say in an interview, but I feel another member of a minority group would have some problems with it.

Q Can we turn to question 65, please.

THE COURT: I think, so that we can work from the record more effectively, it would be desirable if you would read the question into the record.

Q Question 65: "According to the most recent U. S. Census Bureau report economic and educational gains made between 1960 and 1970 by Puerto Ricans living in New York City as compared with blacks were: (a) considerably greater; (b) considerably smaller; (c) about the same; (d) slightly greater."

Now, on page 3 of that same affidavit you said with respect to question 65 that it is strictly discriminatory. Could you explain what you mean by discriminatory there?

A No. 1, I don't think that any of us probably read the Census prior to seeing it on the exam. I know I myself had not, and I doubt the 1970 Census had been posted at the time the exam was given, so in terms of being able to answer this question I thought it would be discriminatory towards minority people. I know there has been some discussion the way the media regarded these things, but in regard to asking the minority person to answer I felt that in itself smacked of some discrimination.

Q Why would it be more difficult for a minority person to know the answer to that kind of question than for a white person, do you know?

A I am afraid I can't answer, but the persons I had in mind as I wrote this were the people who were taking the examination that I was taking. They wouldn't have had the need to be aware of what the 1960 Census said, the 1970 Census, in terms of blacks and Puerto Ricans.

Q And the white people who took the exam, you thought they would be more likely to have to know this for their jobs?

A Not necessarily, but the possibilities are that they might have.

Q With respect to questions 68, 69 and 70, question 68: "A significant aspect of an amendment to the Social Security Act which became effective July 1, 1972, is that it introduces into the Act a program of: (a) public service jobs; (b) income maintenance; (c) medical assistance to the aged; (d) aid to dependent children."

69: "During the past few years the U. S. Supreme Court has made a series of key rulings that directly affect Welfare clients. None of these rulings has been concerned with: (a) fair hearings; (b)state residence requirements; (c) home inspections; (d) the family assist-

ance plan."

Question 70: "A demonstration program for public assistance recipients in New York City recently approved by the U. S. Department of Health, Education and Welfare, which has been the subject of considerable controversy, is the: (a) incentive for independence program; (b) Haitian training project; (c) work incentive program; (d) demonstration work project."

Your affidavit also states that questions 68, 69 and 70 are unfair to minority groups and "totally discriminatory and racist as the majority of persons on Welfare come from minority groups."

Could you explain what you meant by that comment?

A Would you mind if I explained the entire statement that I had there?

Q Certainly.

A If I fecall correctly, I did get all three of these answers correct on my test. What I meant when I made this statement was this. I felt it was unfair to question workers on the various Supreme Court laws that had been passed, the various acts of Congress that had been passed. I know in particular on my job I am not concerned about these particular questions. I happen

to know them because I am well read, I believe, I read these kinds of things, and absorb what I do read. However, I do not feel that the average person who took that examination would have this kind of knowledge, especially my agency, because we do not primarily deal in this particular area. And that also again to me was discriminating.

THE COURT: Do I understand you felt, in other words, that the question asked for information which members of minority groups would be less likely to have at their command than members of the majority group, and that that information was not necessary to do the job? Is that right?

THE WITNESS: That is correct.

BY MS. LOREN:

Q Mrs. Eccles, do you know if the position of supervising human resources specialist is a professional job, a fairly responsible job, or a clerk's job?

A No, it is a professional, very responsible job.

Q Does your job require the interpretation of federal programs?

A Yes.

Q Which are based on federal laws?

A Right.

Q Does it require the application of federal rules and regulations?

A In my particular job?

Q Yes.

A To a certain degree.

Q Do you think a change in federal law might affect one of the programs which is part of your job?

A I am sorry. I did not quite follow.

Q Do you think a change in one of the federal laws might affect one of the programs which is part of your job?

A Possibly, yes.

Q Would you need to know about these changes as soon as possible?

A I would say yes.

Q I think you testified previously that if your job is to be categorized in a specialty title or a parenthetical it would have to do with community programs, is that right?

A Community programs and parent involvement, which is a vast difference.

Q And do you deal mainly with low-income parents in your job?

A Primarily, yes.

Q Are these parents likely to need other services from the city besides the one that your particular project provides?

A Yes, they are.

Q Do they ever come to you and ask you questions about what other programs might be available to them in the city?

A Yes, they do.

Q Are you able to respond to these questions usually?

A Yes, I am, usually.

Q Is it important then for you to know what other kinds of programs HRA provides for low-income people?

A Of course, but I don't have to know the depth of what's involved in the program. I know the services are there and I can refer a person to them.

Q But you do have to know what services are there and, for instance,the name of a program and its general functions?

A Yes.

Q Do you know what's meant by the separation of income maintenance from the social services functions?

A Yes.

Q Does that affect people in the community that you

deal with?

A Yes, that affected all persons who receive public assistance in New York City when that change took place.

Q Do you know what is meant by the term "community social services" as that term is used by HRA?

A I have some understanding, but I am not fully knowledgeable about what that particular program is all about.

Q Did you take the training course offered by HRA?

A One day I was in the training.

Q Just one day?

A Yes.

THE COURT: How long a training course is it or was it?

THE WITNESS: It was a two-week training session, one-half day -- two half-day sessions per day for two weeks.

THE COURT: So you only took a small part of it?

THE WITNESS: That's right.

MS. LOREN: I have no further questions.

MR. HOWARD: I have no questions, your Honor.

THE COURT: Thank you very much, Mrs. Eccles.

(Witness excused.)

MS. OMANSKY: May I take this opportunity to correct the record on something I said this morning which is inaccurate.

THE COURT: Yes.

MS. OMANSKY: I said, I believe, in examining Mr. Jones that examinations for the position of supervising human resources specialist in the specialties of public affairs and auditing had been given and they have not yet been given so I was incorrect and I wanted the record to show that.

THE COURT: Thank you.

M I G U E L M A R T I N E Z, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MINTZ:

Q Mr. Martinez, by whom are you employed?

A I am employed by the Human Resources Administration Agency for Child Development.

Q In what capacity?

A As deputy commissioner.

Q Is that the second ranking position in the agency?

A That is correct.

Q How long have you been so employed?

A Two and a half years.

Q Were you with the Human Resources Administration or its predecessor agency before that time?

A Yes, I was.

Q In what capacity?

A As regional manpower director in Manpower and Career Development Agency.

Q For how long did you hold that position?

A For 30 months.

Q And prior to that?

A Prior to that I worked in Catholic Charities in the Brooklyn Diocese.

Q Is your position and appointment through civil service procedures of taking an examination or through --

A No, it isn't. It's a mayoral appointment.

Q In the course of your duties have you had occasion to come in contact with Mary Eccles, who just testified?

A Yes, I have.

Q Under what circumstances have you come into

contact with her?

A Mrs. Eccles as parent coordinator for Child Development comes in contact with almost every parent that needs any kind of assistance in terms of obtaining aid from Child Development group and day care services or Head Start.

THE COURT: I assume your position has some relationship to her position too, doesn't it?

THE WITNESS: Yes, because she relates to field operations, your Honor, and I am in charge of field operations.

Q What I would like specifically is the nature of your contacts with her. How does your work relate to hers and how are you associated?

A Mrs. Eccles is the person in the agency that deals directly with any parents who complain, any parents' inquiries that either come directly from the parent through the day care center or through the group care. That is the field operation of the agency. Most of the time she meets with me and explains what the problem is all about, and we usually hold regular meetings in order to follow the many outstanding requests that may be pending in the field.

Q You do meet with her on a regular basis?

A I certainly do.

THE COURT: How often, approximately?

THE WITNESS: At least twice a month.

Q For how long have you had this regular contact with her?

A I have been working on a professional basis with Mrs. Eccles for as long has I have been in the agency.

THE COURT: You mwan as long as you have been in the Child Development Agency?

THE WITNESS: That's right.

Q Which is two and a half years?

A Yes.

Q On the basis of this contact, what is your opinion of Mrs. Eccles competency?

A I have a very high opinion of her competency as a parent coordinator. She has done excellent work in the agency that many times demands from her to do things that are not even in her job description, meaning she has to attend a lot of meetings because we have not been able to equip her with the amount of staff that her department was supposed to have at the beginning.

Q Again, in your opinion would the agency and its ability to serve the clientele suffer if Mrs. Eccles

were compelled to be reduced in rank to a lower position and not able to continue her present duties?

A I certainly think so. In my opinion, it would be a big blow for the agency.

THE COURT: I think we have to deal with questions of law here, and I would like to know, Mr. Mintz, whether it is the plaintiffs' position that Mr. Martinez' high opinion of Mrs. Eccles, however much it is to be valued by her and however seriously I regard it, really is at issue in this case or relevant.

MR. MINTZ: I think the relevancy of this is that if this is indeed a highly competent person to perform these jobs and we have an examination which says she is incompetent to perform the job, then one of those is in doubt, and it is our view that it is the examination.

THE COURT: I see. I understand your rationale.

BY MR. MINTZ:

Q Are you familiar with Charlotte Jefferson?

A Yes, I am.

Q Under what circumstances have you come into contact with her?

A Mrs. Jefferson is special assistant to the

commissioner of the Agency for Child Development and she is assigned to administrative work that is closely linked to field operations, and whenever requests come to the agency, to the commissioner's office, she is the person that serves as liaison between the commissioner and I in terms of resolving or answering the requests that have come either through the mail, phone calls or through meetings.

Q How frequently do you come into contact with Mrs. Jefferson?

A Daily.

Q Is this also for the past two and a half years?

A That is correct, sir.

Q On the basis of that experience, what's your opinion of Mrs. Jefferson's competence?

A Mrs. Jefferson's competence is very high, you know, as far as the agency is concerned. She has a lot of knowledge in terms of what the agency's services used to be before we became an agency on July 1, 1971, and she has served my office with a lot of integrity and a high class of service.

Q Would it be detrimental in your opinion to the agency to lose Mrs. Jefferson's services?

A In my opinion, it will.

Q Do you also know Mr. Andrew Jackson?

A Yes, I do.

Q Under what circumstances have you come into contact with him?

A Mr. Andrew Jackson, he is the coordinator of the personnel department of the Agency for Child Development, and he has to process all of the persons that I have submitted, you know, in my two and a half years in the agency for employment with the agency. He also analyzes constantly all of the communications that emanate from the Human Resources Administration, Department of Personnel, meaning Mr. Rosenzweig's office, and he takes care of all of the timekeeping, you know, for all of the resource centers, the staff and central office for the Agency for Child Development. I know him before that because he used to work in Manpower and Career Development Agency in the Personnel Department when I worked there prior to coming to the agency.

Q So you have known Mr. Jackson for longer than two and a half years?

A For five years.

Q Over those five years could you estimate how frequently you came into contact with him?

A The first two and a half years not very often,

a matter of four or five times a year, but since he became the coordinator of ACD personnel I deal with him on a weekly basis.

Q On the basis of that experience, what is your opinion of Mr. Jackson's competence?

A He has done a formidable job as coordinator of the Department of Personnel.

Q Would it be detrimental to the agency to lose Mr. Jackson's services in his present position?

A It would be because of the amount of knowledge that he has acquired in the two and a half years with us.

Q And, finally, do you know Gloria de Berry?

A Yes, I do.

Q Under what circumstances have you come into contact with her?

A Mrs. de Berry, as well as Mr. Jackson, was in the Department of Personnel, Human Resources Administration, when I was working in Manpower and Career Development Agency.

THE COURT: So you have known her longer than the two and a half years too?

THE WITNESS: I have known her close to five years.

Q And how frequently have you come in contact with her?

A At least twice a month when I was in Manpower. She was the person assigned to the area of Brooklyn under which my regional manpower training center fell.

Q And how about with the Agency for Child Development; how frequently do you have contact with her?

A I have dealt with her perhaps twice in the last six months, that's all.

Q Are you in a position on the basis of that contact to have an opinion about her competency?

A Yes. Every time I have met with Mrs. de Berry or that I have called her office for any kind of concern in terms of personnel she has always been very prompt, very professional, and she has constantly given me an answer or referred me to the department where I could get it.

MR. MINTZ: I have no further questions.

CROSS EXAMINATION

BY MS. OMANSKY:

Q I have certain questions to satisfy my curiosity, Mr. Martinez. What did you do in the Manpower and Career Agency?

A I was regional manpower director.

Q What did that involve doing?

A That involves being responsible for the allocation of training funds for that particular area of the city.

Q Training funds?

A In this case I was in charge of the area covering Bushwick, Williamsburgh, Fort Greene, Brooklyn Heights, and Greenpoint.

Q And was Manpower and Career Development Agency a part of Human Resources Agency?

A Yes, and it still is.

Q Then you transferred to the Agency for Child Development, is that right?

A Yes.

Q What do you do as deputy commissioner?

A I am in charge of all field operations, which means I supervise directly the 10 resource areas in which we are monitoring and assisting technically all the day care centers, group day care, family day care and Head Start programs that we are responsible for.

Q You said 10 resource centers?

A Yes.

Q Is that a fairly new development?

A It's fairly new, since August 18, 1971.

Q Do you expect somebody in the Agency for Child Development to know something about these centers?

A Yes.

Q Did you find it relatively easy to transfer from the Manpower Agency to the Human Resources?

A Not at all.

Q It was difficult?

A It certainly was.

Q Why was that?

A I was the regional manager, which meant I only dealt with one-twelfth of the City of New York. Certainly not at a commissioner's level. I mean as deputy now I am responsible for field operations, which involves $150 million.

Q I can see that the level, the amount of money, is obviously greatly increased, but the same type of skills, I suppose. In other words, because you had this certain type of training in Manpower and Career Development you were eligible for a high-level position in the Agency for Child Development?

A That's right.

MS. OMANSKY: I have no further questions.

THE COURT: Thank you very much.

(Witness excused.)

MR. HOWARD: Your Honor, we intend to call another witness, but that witness is en route and has not arrived at this minute. We know she is on her way.

THE COURT: Is there some reason to believe she will be here in the next 10 or 15 minutes, for example?

MR. HOWARD: So I understand.

THE COURT: Will that be your last witness?

MR. HOWARD: Probably.

THE COURT: The reason I ask is if there is another witness I will be glad to hear that other witness, otherwise we will take a short recess.

MR. HOWARD: There is not another witness here.

MS. OMANSKY: I have no objection, but I would appreciate, if it is a new witness, I would like to know something about her, but that we can do during the recess.

THE COURT: All right. Give her a preview of the testimony during the recess.

(Recess.)

MR. HOWARD: Miss Gentile.

C A R O L Y N G E N T I L E, called as a witness, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOWARD:

Q Miss Gentile, are you employed by the Human Resources Administration?

A Yes, I am.

Q What position do you hold with the Administration?

A I am the Assistant Administrator, Office of Labor Relations.

Q How long have you been with the Administration?

A I have been with HRA since January 29, 1973.

Q Do you know one of the plaintiffs in this lawsuit, James Jones?

A I do.

Q Would you describe the circumstances under which you met him?

A Mr. Jones came to me when I was -- soon after I was appointed as Assistant Administrator in charge of labor relations, and asked whether I would have an opening for him in the division. I said I did, and after the processing Mr. Jones came in, worked in my division in about May 1973, give or take a few weeks.

Q And do you recall what his duties were upon coming to your division?

A Yes, he served in a dual capacity. He was both a field representative and a grievance hearing officer.

Q Would you describe in some detail the specific functions Mr. Jones had as a field representative?

A We have -- or I have a staff of five individuals who serve as field representatives. The function of these individuals is to receive complaints from unions and/or management as to conditions that may result in a confrontation or a dispute in various work locations, and our job is to try to see whether we could solve the problem before it reaches the point where there is a confrontation or a grievance would be filed formally.

Q Would you describe in somewhat greater detail the duties of the grievance -- did you say grievance hearing officer?

A Grievance hearing officer, right. When a formal grievance is filed we are under the collective bargaining agreement with the various unions and he is charged with representing the administrator or the agency in trying to resolve those grievances which Mr. Jones brought on occasionwhen we were backlogged or needed his particular expertise in that particular area. He would hear the

presentation and would make a determination or a recommendation to me and if I approved of that recommendation it would become the determination of the Administrator.

Q Did Mr. Jones' duties involve the preparation of any kind of written reports or memoranda?

A Yes. As I just indicated, if he heard a particular grievance he would submit to me his report and recommendation.

Q Which would be in writing?

A It would be in writing, that's correct. As a field representative he on numerous occasions gave me verbal reports as to what had been done, the problems that he needed some guidance on and made suggestions to me as to how things couldbe handled.

In addition, there were a number of occasions on which I sent Mr. Jones out into the field to do a survey and give me a written report as to his findings and recommendations as to the particular way in which a particular problem should be handled.

Q Let me ask you: Did his report as a grievance hearing officer consist, shall we say, of a summary of statements or testimony and a summary of relevant provisions of the collective bargaining agreement and then a recommendation based upon that?

A That's right.

Q Did Mr. Jones work in these capacities directly under your supervision?

A He did.

Q Do you have an opinion, Miss Gentile, with respect to the competence of Mr. Jones' work?

A In my experience Mr. Jones has shown excellent competence. I found that he was able to analyze and handle situations and he did a thorough and well thought out job.

Q Was it necessary for you to formally evaluate Mr. Jones while he was under your supervision?

A Yes, it was.

Q Do you recall the kind or kinds of evaluations that you made?

A Yes. It is a matter of normal agency procedure to evaluate all staff members on an annual basis. That should have occurred, although we were somewhat late in April, but we submitted it late so, therefore, Mr. Jones was eligible for my evaluation and I gave him, I believe, a good evaluation.

MR.HOWARD: Thank you. I have no further questions.

CROSS EXAMINATION

BY MS. OMANSKY:

Q Miss Gentile, you are a lawyer, aren't you?

A Yes.

Q When did you graduate from law school?

A In June of 1968.

Q You have been at the agency since when?

A Since January of '73 -- January 29th.

Q Was that your first connection with the agency?

A Yes.

Q Well, you said it was a matter of agency procedure to evaluate people. You are basing that solely on approximately a year with the agency; is that correct?

A Yes.

Q Is it possible that that is a new procedure?

A Any testimony that I could give you would, you know, just be on the basis of what I have been told by my superiors.

Q And what you yourself and your superiors have told you, that it was customary to evaluate?

A Yes.

Q Who told you that?

A Mr. Demsky.

Q He told you it was customary to evaluate as a

matter of agency procedure?

A Yes.

THE COURT: Is this terribly important? It seems to me the important thing is whether she evaluated what this gentleman did.

MS. OMANSKY: I think it is important. It is my belief -- and I was wrong once so far -- that it wasn't the custom at all to evaluate people.

THE COURT: Mr. Howard didn't mean to bring out whether it was customary or not. You didn't mean to bring that out, did you?

MR. HOWARD: No, I did not. I don't mind, with a slight objection, her giving what her personal evaluation is.

THE COURT: I am just trying to see whether we need go into this or not.

Q You said that you sent word -- first, do the appeals representatives all supervise?

A No.

Q What is their position?

A They have various titles. One is a Sup. I.

Q Sup. I in what?

A Case work title.

Q That is a service title: right?

A Yes.

As a matter of fact, two of them are in case work titles. I don't think it is relevant or important to give you their specific titles. And two have been in clerical titles.

Q You said you sent Mr. Jones out in the field in his particular area of expertise.

What was that?

A Well, he had come to me from personnel and one of the specific surveys he performed was to do a desk audit, in effect, an informal one, to determine certain people were doing out of title work, and that had come about because of the union complaints to my office. And he wanted to check it out to see if that was correct or incorrect.

Q So you are saying that you feel that his expertise was personnel manager. Would that be correct?

A Yes, he had competenece in that area.

Q Did Mr. Jones under your supervision assist in negotiating contracts?

A We had no contract negotiations that were being perfected during the time that he was with me, but that would be part of his job if there were such negotiations.

Q But you, to your knowledge, don't know if he ever did

that because none existed?

A Not at that time, no.

Q To whom did he interpret negotiated contracts in the collective bargaining agreements?

A He would give them to me, or to Mr. Norman who was my deputy.

Q He would give it to his superior?

A Yes.

MS. OMANSKY: That is all.

REDIRECT EXAMINATION

BY MR. HOWARD:

Q Miss Gentile, one other question.

In terms of ethnic designation, are you white, black, Hispanic, or of some other ethnic background?

A White.

MR. HOWARD: Thank you. I have no other questions.

THE COURT: That is all.

Thank you, Miss Gentile.

(Witness excused.)

MR. HOWARD: Mrs. Stern.

C A R O L E S T E R N, called as a witness, being first duly sworn, testified as follows:

THE COURT: Keep your voice up so we can all hear you, please.

DIRECT EXAMINATION

BY MR. HOWARD:

Q Is it Miss or Mrs.Stern?

A Mrs.

Q Mrs. Stern, are you employed?

A Yes.

Q By whom?

A Community Development Agency.

THE COURT: That is part of HRA?

THE WITNESS: Yes.

Q What position do you hold with the Community Development Agency?

A At present education specialist.

Q Do you hold another job title?

A No.

Q Do you hold a title as a Human Resources Specialist?

A Senior Human Resources Specialist.

Q So that you work within education as such and your title is Senior Human Resources Specialist; is that correct?

A Yes, I work in and out of education.

Q How long have you been employed by the Human Resources Administration?

A Since January of 1970.

Q What titles have you had since being employed there?

A In January 71 I was a Provisional Human Resources Specialist, and then last August, that is August of '73, I was promoted to Senior Human Resources Specialist.

THE COURT: Is that permanent or provisional?

THE WITNESS: Provisional.

Q Are you presently serving in that title?

A Yes.

Q Would you describe briefly what your duties consist of?

A Well, at present I am working in program planning and budget department directly with Commissioner Pierson.

MS. OMANSKY: I am sorry, Mr. Howard, I would like to know the thrust of Mrs. Stern's testimony.

THE COURT: She is coming to testify --

MR. HOWARD. She is going to testify with respect to her taking one of the examinations in issue.

THE COURT: All right.

MR. HOWARD: And I will ask her.

THE COURT: All right, let's hear it. You can always

move to strike it.

Q Mrs. Stern, did you take an examination in October 1972, numbered 2013 -- you may not recall the number -- and entitled "Open Competitive Supervising Human Resources Specialist"?

A Yes, sir.

Q When did you learn that such an examination was to be given?

A To the best of my knowledge, about two or three months prior to this examination.

Q Was that through the posting of a notice, or whatever?

A Yes.

Q Did you undertake any kind of formal study or course material, whatever, in preparation for that examination?

A Well, I attempted to do that. There were preparatory courses that were given and unfortunately I was unable to be at as many of them as I would have liked, but I did some reading of the material given to me by fellow workers.

Q Did you receive a so-called passing score on this examination?

A Yes, I did.

Q When were you notified that you had passed the examination?

A I really don't recall exactly when, but I had received at home a card from the Department of Personnel with a list number for the supervising examination.

Q And are you at the present time eligible for promotion to the position of Permanent Supervising Human Resources Specialist as a result of your having passed that examination?

A Yes.

Q Now, you testified that you have been employed by the Human Resources Administration for some approximately four years; is that correct?

A Yes.

Q Has all of your employment been confined to the Community Development Agency?

A Yes.

Q Have you had any contact in your work responsibility with other agencies within the Human Resources Administration?

A Yes, I have.

Q Would you describe briefly the other kind or kinds of contacts you may have had?

A Well, I have contact with HRA central, specifically the education unit.

You serve in the agency with educational projects in conjunction with which both agencies were involved together. Generally speaking, those two agencies.

Q Now, Mrs. Stern, based upon your experience as an employee of the Human Resources Administration, do you have an opinion as to whether the examination that you took was related to the work that you performed?

A In my opinion, absolutely not.

Q What is the basis for that opinion?

A Well, for one thing, had the examination been truly job related, I am sure I would have scored very high.

Q Yes.

A Okay.

Q You passed it, in any event, did you not?

A Yes, I passed, but not as highly as I would have.

THE COURT: Apparently you do know that you passed.

THE WITNESS: I think it was 78, or something like that.

MR. HOWARD: Your Honor, the record shows that she received a 71 on the examination and 80 on the oral part of the examination.

Q Go ahead, Mrs. Stern.

A Well, that would be the first thing. The second thing, as I recall the examination itself was really not

quite clear as to specific questions, but I do remember coming away from the examination feeling that it had little if anything at all to do with my job and was uncomfortable taking the examination as a result.

I was specifically emotionally uncomfortable because it was not job related.

Q Incidentally, what is your educational background, Mrs. Stern?

A I am really just a high school graduate.

Q You say just a high school graduate?

A Yes.

Q You went to elementary school and secondary school?

A Yes, and high school.

Q Did you have any training beyond the high school level?

A Yes, I did, but sporadic and non-matriculated and not worth mentioning.

Q You hold no degrees, no bachlor's degrees or associate's degrees whatever?

A No.

THE COURT: Did you go to high school in New York?

THE WITNESS: Yes.sir.

Q Prior to taking this examination, Mrs. Stern, had you had any experience in taking other civil service

slbr 2 Stern-direct

examinations?

A I had never taken a civil service exam before.

Q Had you had any experience in taking examinations of a non-civil service nature?

A Yes, of course.

Q What kind?

A Oh, Regents examinations, college entrance examinations.

Q What are Regents examinations?

THE COURT: I know what Regents examinations are.

MR. HOWARD: Your Honor, I am not familiar with New York. I am not sure I know.

THE COURT: I thought everybody knew, even outside New York.

Go ahead, you may describe it.

A It is sort of like a civil service test for high school students to insure after you have taken a certain number, let's say, for instance, language courses, that you can pass, and they are standardized, and I believe they are state wide or city wide examinations.

Q What kind of things does Regents examination test, as you can recall?

A Not much that had anything to do with what you learned,

but basic skills within the subject.

THE COURT: Have you ever taken an exam which tested what you learned?

THE WITNESS: No, as a matter of fact.

Q Does such an examination test reading skills, for example?

A Yes, very strenuously.

Q And mathematical, arithmetical skills?

A Yes.

Q Now, Mrs. Stern, did you subsequent to the institution of the present lawsuit sign a petition along with other HRA employees in which you state that you recognize the invalidty of the examination?

A Yes, I did.

Q I show you this. Would you look at that and tell me if your signature is on that piece of paper?

A Yes, it is.

MR. HOWARD: Your Honor, may I offer this petition.

MS. OMANSKY: May I see it, Mr. Howard?

MR.HOWARD: Do you want to see it?

MS. OMANSKY: Yes, sure I would.

THE COURT: For what purpose?

Mrs. Stern has already testified she has signed it and she has already testified she does not think the

exam was job related. What would this add?

MS. OMANSKY: I object quite strenuously to this, your Honor.

MR. HOWARD: We will defer offering that.

I have no further questions.

CROSS EXAMINATION

BY MS. OMANSKY:

Q I am also not from New York, Mrs. Stern, and I am quite taken with your statement that Regents are sort of another civil service exam.

Did you say something like that?

A Yes, I did. In my opinion.

Q Are Regents exams aptitude tests or are they achievement tests?

A No, they are achievement tests and they are necessary for graduation for an academic diploma.

Q Are they suppose to test your achievement in areas like French and English?

A Yes.

Q And that has nothing to do with your knowledge, in fact, in those areas?

A In my opinion very little.

Q What do you think would be a good measure of your knowledge in high school subjects?

A I would imagine that one of the main reasons that it was difficult to test individual achievement was that it was not a classroom or even a school wide test but it was much wider geographically than that, and I would certainly say that the teacher was responsible for teaching the curriculum, whatever it began and ended with, would be the person who would be in a position to judge achievement.

Q And not, in fact, what you knew; just what an individual teacher thought you knew, is that right?

A As a result of a test based on what was presented in the curriculum during the period we are being tested about.

Q Do you have a standard curriculum in the New York City school system?

A It varied. It was supposed to be standard but it varied.

Q Tell me what your job as an education specialist is. What do you do?

A For a number of years up until about June of this year I was special assistant to Commissioner Owens for education action.

Q I beg your pardon? Special assistant to Commissioner Owens for eduction action?

A For education action.

In that capacity I kept abreast of issues city wide

that affected the people in 26 poverty communities in the City of New York; upcoming legislation; covered Board of Education meetings; made recommendations; worked with a dozen or so education staff in the educational unit of CDA on various projects relating to the public school system.

Q How many people were special assistants to Commissioner Owens for education action?

A As far as I know I was the only one.

Q The examination for Supervising Human Resources Specialist was not job related because it did not test for your knowledge of your duties as special assistant to Commissioner Owens for education action?

A And an education specialist in the field unit in CDA which I subsequently became.

Q What parenthetical area are you in?

A Excuse me?

Q What parenthetical area are you?

A I don't understand that question.

Q Well, there has been a lot of testimony in this lawsuit about there should have been exams given in parentheticals --

THE COURT: Do you know what the term "parentheticals" means?

THE WITNESS: I am not quite sure.

Q When you were assigned as Senior Human Resources Specialist were you assigned to a generic position?

You don't know what that means either, do you?

A Yes, I do.

Q You do know what that means?

Were you assigned to a generic position?

THE COURT: There was no breakdown, no sub-class in parenthesis after that?

THE WITNESS: No.

Q What do you know about those specialities? Do you know what specialties are? Do you know what a management specialty is?

A Yes. We don't have those lines in our agency, which is why I am slightly confused.

Q Do you know what a community development and training specialty is?

A No.

Q Do you know what an NBT specialty is?

A No, I am afraid I don't.

Q You said as part of your job you kept abreast of what?

A Education issues.

Q Affecting people throughout the city?

A That is correct.

Q How broad was that? I am sorry, I couldn't take notes fast enough. I thought you gave us a number --

A We have 26 poverty communities.

Q 26 poverty communities?

A Right.

Q And you kept abreast of education issues in those communities?

A Yes.

Q And you were the only special assistant to Commissioner Owens for education?

A That is correct.

MS. OMANSKY: No more questions.

THE COURT: Mrs. Stern, you apparently had this general feeling, I understood you to say, about the lack of relatedness between the examination and your own work when you took it.

Did you by any chance -- how can I put it -- specify to yourself any particular questions that you thought were unrelated or was it just a general overall impression?

THE WITNESS: Specifically I cannot remember them, it was quite a while ago, but also a general overall feeling.

THE COURT: We have here a copy of the exam.

Would you be able to do anything useful for us if you examined it and told us what questions you thought were or were not -- I don't know whether I would want you to go through all of the 70, or whatever it is, 80, but I am asking whether you think if you looked at the exam you might be able to pick some pages which in your opinion were typical of the lack of job relatedness as you described it?

THE WITNESS: I might.

THE COURT: Can someone furnish Mrs. Stern with a copy?

MS. OMANSKY: Yes. 2013 (handing).

THE COURT: That is the exam you took, is it?

THE WITNESS: It looks familiar, yes.

Now what is it exactly that you would like me to do with this?

THE COURT: Well, it would be more helpful to me if you could say question No. so and so did not relate to my work because I never did so and so, or something of that sort, rather than merely to make a general observation which is useful to a point but not very specific.

Perhaps you could give me a few examples of the things that you considered to be irrelevant, so to speak. If you can't, why, that is all right too.

THE WITNESS: I am just glancing at the first page, 1 through 6.

THE COURT: Yes?

THE WITNESS: And I am sure that all of the information requested here is very important in some areas but certainly not in my agency and certainly no. in my job. That is the first page.

For instance, question 14 which deals with the "halo effect," I am sure that there are many people who are very familiar with the halo effect and its effect on supervisory subordinate relationships, but I would feel that it would be pretty unnecessary --

THE COURT: Do you know what the halo effect is?

THE WITNESS: No, I am not sure.

THE COURT: I don't either, but then I have a different job.

THE WITNESS: Then, so have I.

THE COURT: I know what the gavel effect is.

THE WITNESS: I mean, it just goes on like that.

THE COURT: All right, thank you.

Any further questions, Mr. Howard?

MR. HOWARD: Yes, your Honor, just two questions.

REDIRECT EXAMINATION

BY MR. HOWARD:

Q Mrs. Stern, notwithstanding the effect that apparently you don't understand or know what parentheticals are, you did, in fact, pass this examination, is that right?

A Yes.

Q In terms of the ordinary or customary ethnic classifications, are you white or black or Hispanic or of some other ethnic background?

A White.

MR. HOWARD: All right, I have no other questions.

THE COURT: Thank you, Mrs. Stern.

(Witness excused.)

MR. HOWARD: Your Honor, plaintiffs rest at this time.

MS. OMANSKY: Plaintiffs told defendants they were going to have a two-day case, and I am afraid to say that we are not prepared to go on. It is ten minutes to four and we would like to adjourn if that meets with the Court's approval.

THE COURT: Adjournment always meets with the Court's approval.

Now, are we going to go into this other case the first thing tomorrow morning, or what?

MR. HOWARD: Yes, your Honor. I think there is a question of whether the City is willing to submit any reply papers or any evidence --

THE COURT: Well, I merely am asking everybody whether they will be ready to proceed with that tomorrow morning, and, if not, when.

MS. OMANSKY: It was our understanding that we would go ahead tomorrow. I am not sure I am going to have any papers. We did want to inform you of that particular problem, that some people have been appointed --

THE COURT: Yes, I am aware of that.

MS.OMANSKY: I will have to get back to the agency and see if there is anything further.

THE COURT: Well, let's leave it this way: Whatever the City wants to bring to my attention in this regard will be brought to my attention the first thing tomorrow morning, and we will stick to it for as long as we need to and dispose of it one way or the other.

MS.OMANSKY: Yes.

THE COURT: Then you will be prepared to proceed thereafter in this case?

MR. MINTZ: Your Honor, I would like to bring up the problem which I mentioned last week regarding our expert witness in view of the more clear understanding

we have of the time situation.

This need not be on the record.

(Discussion off the record.)

(Adjourned to Tuesday, January 8, 1974, at 10 a.m.)

James C. Jones, et al.

v. 73 Civ. 3815

The New York City Human Resources Administration, etc., et al.

New York, January 9, 1974
10:15 a.m.

- - -

(Trial resumed.)

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MS. OMANSKY: The defendants' first witness will be Leonard Rosenberg.

L E O N A R D Y. R O S E N B E R G, called as a witness by the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. OMANSKY:

Q Mr. Rosenberg, what is your present position?

A I am in the office title of Assistant Chief, Office of General Examining of the Bureau of Examinations of the Department of Personnel in the City of New York.

THE COURT: Would you repeat that for me, Assistant Chief?

THE WITNESS: Yes, Assistant Chief, Office of General Examining of the Bureau of Examinations of the Department

of Personnel of the City of New York.

My civil service title is Administrative Personnel Examiner, which is a managerial position comprising a number of levels within which I operate and in the office title as just given to you.

Q And how long have you been in your civil service position, this civil service position?

A Well, in this office title I have been serving since April 1st, 1973.

Q And what are your present responsibilities?

A My responsibilities are to be in direct administrative control of three examining divisions comprising approximately 45 professional personnel, in addition to related clerical and stenographic staff. In addition we utilize the services of expert examiners on an annual budget. I would say the payroll for my operation runs in excess of a million dollars a year.

Q How long have you been associated with the Department of Personnel and in what capacities?

A Yes,I came to the Department of Personnel on July 1, 1956, as a Junior Personnel Examiner, as a result of having passed an open competitive examination for a related title of Personnel Assistant, which was made appropriate for the title of Junior Personnel Examiner.

Subsequent to that, by promotion examinations, I became successively Assistant Personnel Examiner, Personnel Examiner, Senior Personnel Examiner, and finally I became Administrative Personnel Examiner as of March 1972.

THE COURT: So you have been in the examination part of personnel throughout, is that what I understand, or for a long time, anyway?

THE WITNESS: I wouldn't call it exclusively examining. I was part of the Department of Personnel which comprises various activities relating to the total civil service system.

THE COURT: Is your work now exclusively in the examining field?

THE WITNESS: Yes.

THE COURT: For how long has your work been exclusively in the examining field?

THE WITNESS: I have been associated with the Bureau of Examination in the titles of Senior Personnel Examiner, and I actually was assigned to the Bureau of Examinations in 1970. Some of my former functions peripherally dealt with examining matters as well.

Q Now, when were you first assigned any responsibility for dealing with the title of Supervising Human Resources Specialist, and can you explain the circum-

stances?

A Yes. As I just stated, in 1970, as the senior personnel examiner, in a reorganization of the Department of Personnel, I was assigned to the Bureau of Examinations, Examining Division S.

THE COURT: S?

THE WITNESS: S, which is one of the divisions that I just mentioned that I am now over, which was responsible for this series of titles, in addition to a large number of other titles as well.

Upon being assigned to that division, I was told that I would be responsible for all Department of Personnel matters dealing with this series of titles as well as others.

THE COURT: By that you mean Human Resources Specialist?

THE WITNESS: Specialist titles, among others. And my initial contact in an actual work situation with it was probably within the first week of my assignment, in connection with the qualifying of provisionals under that form that has been previously mentioned at this trial, that is, the DP 69, which is a form initiated by an agency desiring to place a person in a civil service title, where there is no eligible list to appoint people from.

On this form, the agency and the individual submits the education and experience of individuals and lists the title they wish to appoint the individual to.

We match up that material on the specific individual against the standards that have been established in the latest official promulgated document from the Civil Service Commission, in this case, the first examination in this case for supervising personnel -- I am sorry -- Supervising Human Resources Specialist, and based on whether or not the individual meets these minimal requirements or not we advise the agency whether or not the individual can be placed on the payroll or not.

Q So to summarize, Mr. Rosenberg, the agency request basically indicates its desire to appoint a specific individual?

A That's right.

Q That individual does not come from the eligible list, and thatindividual and the agencies submit a form in which the individual lists his background and his experience, and that goes to the Department of Personnel, and you examine that form forthe purpose of seeing whether or not the individual has the minimum requirements for the position, as based, as you said,in this case, on the latest document which would be the notice of exam; is that correct?

A That's correct.

Q So that any provisional who was seeking to be appointed in person, who was seeking to be appointed as a Supervising Human Resources Specialist, presumably meets the experience requirements.

A Education and/or experience requirements.

THE COURT: Now,let me understand a little better:

I do understand that even in order to be appointed as a provisional you have to meet the educational and experience requirements.

The notice of examination which you use as a of measurement in such a situation would be, I assume, the notice of examination, of the last examination, is that right?

THE WITNESS: That is true.

THE COURT: Whatever time you happened to be doing it.

THE WITNESS: Yes.

THE COURT: Okay.

Q During this time that you were evaluating provisional applications, did you have any contacts with any officials of HRA?

A Yes. I dealt with the Personnel Office of HRA to quite an extent in dealing with the problems of applications being submitted in one form or another, and in addition I was

also dealing at times with other individuals as well, though primarily with the personnel office.

THE COURT: Well, can you tell me a little more in detail just what kind of a contact you had them; how often, for example, this thing came up and what the substance of your meetings and discussions was about?

THE WITNESS: Yes. Quite often before the agency formally submits the DP 69 to our agency, they ask for an informal opinion as to whether or not, if they formally submit it, the individual will be qualified or not.

As you can understand, if they submit something formally, and an individual leaves a job, for example, to come to work for the City, and then the final decision is that the person isn't qualified, this can have a -- how can we call it -- a bad effect.

THE COURT: We call it an adverse effect.

THE WITNESS: Adverse effect on the individual which we naturally try not to have if it can be helped.

So very often I was in contact with people on these submissions which we call prior approvals.

THE COURT: When you say very often, how often do you mean? Once a week, twice a week??

THE WITNESS: I would say at least two, three times a week.

THE COURT: And over what period of time?

THE WITNESS: Over a period, from the time I came into the division, in 1970, up to the period when we became formally involved in the examining process directly, which was in '71.

THE COURT: '71.

So for about a period of more than a year?

THE WITNESS: Approximately a year, I would say.

THE COURT: Okay.

Q Mr. Rosenberg, I would like to go back to some of your prior experience before I continue with the rest of the questions.

You mentioned to me that you had experience in the classification department. Is that the proper --

A No.

Q That is wrong? Okay. What is the correct title?

A I am title conscious.

Yes, in 1956, when I came to the Department of Personnel, my initial assignment was with the Bureau of Classification and Compensation, which was the bureau responsible for the evaluation and analysis of all the positions in the City of New York, to determine if the

individual holding a position was in the proper title to make decisions on out-of-title work, to determine if the level that the person held was the appropriate level within the occupational group that they were assigned to in any and all city departments, and in general to handle all salary matters for the city which was a joint responsibility of the Department of Personnel and the Bureau of the Budget at that time, until the establishment of the Office of Labor Relations under Mayor Lindsay.

Q What did you do daily? You described generally, but what was the actual nature of your work?

A My initial assignment from the time that I entered the department, through the period when I became a personnel examiner in 1959, was as a field auditor.

Q What is that?

A The Mayor at that time, Mayor Lindsay -- I am sorry, Mayor Wagner, stated that as a policy he wanted each individual in the City of New York, employed by the City of New York, should be audited in their position to determine whether or not the individual was performing appropriate duties according to the title that the individual held.

For those approximate three years that I was Junior Personnel Examiner and an Assistant Personnel Examiner, I made thousands of audits which we called

desk audits.

These were audits to analyze and determine the exact duties of the individual.

The individual initially submitted a description of his position.

The agency cleared that statement and added any additional information that they wished to amplify the employee's statement.

Then I individually met with the employees privately to perform what we called a desk audit, in which we gathered voluminous information about the exact duties of each and every position in the city.

Q Did you have any experience in the Department of Social Services, which was then a separate agency?

A Among other agencies within which I did field audits or job audits -- I am sorry, not job -- desk audits, was the Department of Welfare which was the former name of the Department of Social Services, and I would say I saw conservatively 500 to 1,000 people in that department.

THE COURT: This is still back in the 56-59 period?

THE WITNESS: That's correct.

Q Now, I think I will bring you to the current --

A If I might add, after that assignment I remained with the Bureau of Classification and Compensation where,

as a Personnel Examiner, based on other peoples' audits, I did the evaluations of the people who had submitted these documents to determine whether or not the incumbent was holding the proper title or not, and if it was not the right title, to list what the appropriate title would be when that individual left that position.

By direction of the Mayor, no individual could be adversely affected by the process that we were going through to classify each and every position.

I also subsequently became the Chief of the Division, as a Senior Personnel Examiner, which was responsible for the issuance of class specifications for all city titles, which is a comparable document to the examination advertisements and the binding document is always the last document approved by the Commission, whether it is a class specification or an examination ad.

Q I am going to bring you up to date quickly, take a giant step forward, and I am going to ask you a question related to the Supervising Human Resources Specialist exam.

Do you know when the first examination for Supervising Human Resources Specialist was given?

A Do I know?

Q Yes, do you know when it was given?

A I believe it was actually administered in 1968.

Q What kind of an examination --

THE COURT: This is for Human Resources Specialist?

MS. OMANSKY: Supervising Human Resources Specialist.

A It was primarily a training and experience examination with a qualifying oral also being a part of the examination package. But the only ranking device was the training and experience examination that was administered at that time,

Q In other words, how you rated -- how are you rated on a training-experience exam and on this exam in general?

A In general, a key is prepared on the basis of which the individuals who submit their experience papers, which contain space for both education and experience, are reviewed.

Initially they are reviewed to determine if the individual is qualified or not under the terms of the examination ad.

If they are not qualified, the individuals are so advised and they may appeal and submit further documentation.

However, assuming the individual is qualified, then, based on the key, which is prepared in advance, the individuals are ranked according to whether -- according to that key -- they rate a higher or lower passing mark.

Q Well, in other words, it would be correct to

say there is a numerical score given for training and experience, is that correct?

A That's correct.

Q And there is no written examination for training and experience?

A None.

THE COURT: None?

THE WITNESS: None.

THE COURT: Okay.

THE COURT: How do you go about making up the key there?

MS. OMANSKY: We have it.

I would like to have this introduced in evidence.

THE COURT: Yes.

BY MS. OMANSKY:

Q Could you identify that?

A Yes, I know that this came from the files of the Department of Personnel and was the key that was used for both Supervising Human Resources Specialist and Principal Human Resources Specialist, which was also administered at the same time.

Q And this was 1968, is that right?

A That is correct.

MS.OMANSKY: I would like to have this marked for identification and offer it into evidence.

MR. MINTZ: No objection.

THE COURT: Received in evidence.

(Defendants' Exhibit E was received in evidence.)

THE COURT: May I take a look at it?

(Exhibit handed to Court.)

THE COURT: Now, would the people who passed -- if that is the right word to use -- this examine put on the

eligible list?

THE WITNESS: Yes.

THE COURT: As if they had taken a written exam?

THE WITNESS: There was no written exam.

THE COURT: I said as if they had taken a written exam.

THE WITNESS: Yes, exactly the same way. The list is equally valid regardless of the examining device.

BY MS. OMANSKY:

Q Did there come a time when you were assigned any responsibility with regard to the present challenged examinations for Supervising Human Resources Specialist?

A Yes.

As it happened, we had promulgated lists in each of three specialities for Supervising Human Resources Specialist.

Q This was as a result --

A The single examination that was announced for Supervising Human Resources Specialist.

Q And lists were established in three --

A Three specialties only, no generic list at all.

Q What were those specialties?

THE COURT: What period are we talking about?

MS. OMANSKY: We are back in 1968.

THE WITNESS: 1968.

THE COURT: In 1968 you established -- I am afraid I have lost it -- you established that list for three specialties?

THE WITNESS: That is correct.

THE COURT: That does not have to do with the exams in this litigation, does it, because those were in 1972, as I understand it.

MS. OMANSKY: If I may speak for plaintiffs, it is one of their arguments that whatis wrong with the present exam, there were three different examinations given in specialties, and I think that is part of their case.

THE COURT: Well, without characterizing it, what you are trying to do is get the chronology of it all.

So in 1968 three lists were established --

THE WITNESS: I believe -- actually, I am not positive -- I believe the lists actually were promulgated in 1969, but, anyway, from that initial examination administered 1968 the lists were established in the three then classified specialties of Management, Community Programs and Manpower Development and Training, or MDT, as we call it, for short.

THE COURT: Now, what do you mean when you say from the examinations that were then given you made the three lists? Are you talking about the examination that I just looked at?

THE WITNESS: Yes.

MS. OMANSKY: The notice of examination is already in evidence for the 1968 exam. I think I introduced it, didn't I?

THE COURT: Mr. Mintz has a copy of it, I see.

(Copy handed to Ms. Omansky.)

MS. OMANSKY: I would like to identify this --

THE COURT: Do you want to mark it first? That would be Defendants' Exhibit F.

MS. OMANSKY: Oh, this is the same as Exhibit C.

THE COURT: All right, any reference to Defendants' Exhibit F will be stricken.

May I see C?

MS. OMANSKY: Yes, we will put it together with the rating.

THE COURT: Now, you don't have Exhibit C before you, but I assume you understand as an expert on this notice of examination, and this one is the third amended notice for Test 7111 which was for Supervising Human Resources Specialist dated September 4, 1968, and it says

"List minimum number of requirements," and then it says "for the specialty of management; for the specialty of human community programs and for the specialty of Manpower Development and Training.

THE WITNESS: Yes.

THE COURT: Now, you will have to forgive me for asking so many questionsbecause this is new material.

What you do, as I understand it, is that after you actually administer the test --

THE WITNESS: Well, if I can correct that. I was not personally --

THE COURT: No, I don't mean you personally. Whoever does that.

THE WITNESS: Yes?

MS. OMANSKY: It wasn't a test, it was a form.

THE WITNESS: It is a test.

THE COURT: An examination, I will call it. Because even though it does not involve any writing the document calls itself that, and I am referring to Exhibit E.

After whatever was done had to be done to rate people who "took" examination No. 7114, which is shown in Exhibit E, you divided those who passed into three groups in accordance with the titles shown in the notice, is that right ?

THE WITNESS: Yes, based on the actual education and experience of the individual submitted on his experience paper, which is the form that is rated.

THE COURT: Right.

THE WITNESS: An individual could be placed in one, two or even all three specialties, based on what their own individual background might be.

THE COURT: Okay.

BY MS. OMANSKY:

Now let's get to the current examinations. Could you describe your involvement with the current, the most recently given examinations for supervising human resources specialist.

THE COURT: Those are the ones actually under attack in this case and they were given in October, 1972, right?

MS. OMANSKY: Yes.

Q Would you answer that.

A From the time I entered Division S I was faced with the fact that we were receiving numbers, in fact, a large number of provisional applications for these titles.

THE COURT: Is that because of the sudden growth of the agency or what?

THE WITNESS: That is my understanding. The agency tremendously expanded its operations. The The lists that had been established for the previous series, the one that we were just discussing, proved inadequate or in terms of numbers of successful applicants. In addition, apparently, the agency felt that they needed positions in the generic title of supervising human resources specialist and not in one of the specialties. The lists were solely in terms of the specialties. We were faced --

Q The lists were in the terms of the specialties, but what were the provisional applications for?

A They are primarily, overwhelmingly, in the

generic title of supervising human resources specialist, for which we did not have a list, since the lists had been established in each of the three specialities.

Q Just let me interrupt you a little bit.

Mr. Rosenberg, if there had been an outstanding eligible list for a position, any position in the Civil Service, do you know whether it is proper to appoint a provisional for that position?

A Again, I am afraid it is slightly technical. Let me explain. If there is a vacancy in a permanent one, which is unencumbered in any way, and there is a list in existence for that title, the agency is required to use the eligible list to make an appointment.

There are,however, sometimes lines which are called leave-of-absence lines, where an individual left one title to take a nother title, perhaps a provisional promotion, or took a position as a noncompetitive or exempt employee, and the rules of the commission state that that position must be reserved for that individual in the event the other assignment ends, and on such a line the city, even if there is a list in existence, could make a provisional appointment because when you make an appointment from the list it is presumed permanent and the person being appointed then also has

a vested interest in that position, provided he performs satisfactorily.

Q Okay.

A But aside from that exception, when there are lists in existence appointments in general are made from the list and provisional appointments are made because a list has been exhausted or no examination has been given or something of that nature exists.

THE COURT: And in this particular case the reason that there wasn't a list was because no examination had ever been given for the generic title.

THE WITNESS: That is correct. And the agency, I presume, decided that they needed people in the generic title.

THE COURT: Will we get some elucidation about the agency's actual reasons here, instead of speculation?

MS. OMANSKY: I hope so.

THE COURT: The way Mr. Rosenberg puts it, I don't think his view is admissible.

MS. OMANSKY: We will have somebody from the agency.

THE COURT: Except to the extent you can report to us, if you would, what you, when you were in college, were asked to do, what kind of exam you were

asked to prepare.

BY MS. OMANSKY:

Q Will you answer that?

A Instructions were given to me --

THE COURT: By whom?

THE WITNESS: By the director of examinations, through my division chief to me -- to order examinations in the whole series of human resources specialist from human resources specialist up to and through, I believe, principal.

Examinations were so ordered. At that point in time we had figures as to the number of provisionals that were serving in each of the titles. We also had figures on the number of permanent incumbents in the next lower title which is used to determine if there is a need for a promotion examination or an open competitive examination or both.

In this situation we had determined on the basis of the large number of provisionals the limited number of permanent incumbents in the next lower title for each of these titles, and based on the fact that we hoped to produce lists that should last a minimum of a year and possibly up to four years that it would be advisable to order from the commission both promotion and

open compjetitive examinations.

Since the provisionals were in the generic titles primarily we ordered generic examinations, except that for the specialty of manpower development and training there were a number of provisionals in that specialty only and we also ordered in this case open competitive examinations only because there were no permanent incumbents in any lower title with the specialty of manpower development and training.

I might add, I am not positive, there may have been ordered a promotion examination for principal human resources specialist (MDT), but that is not germane to this.

Q So examinations were ordered in the promotional and -- that is, promotional and open competitive examinations were ordered?

A That's correct.

Q And what did you do?

A Upon ordering these examinations through the commission I contacted the Human Resources Administration, their office of personnel, specifically the person in charge of the office at that time, Mr. Harold Basden, and his immediate deputy, a Mr. Howard Matelli, and I told them that we had ordered these examinations, that

there were a large number of provisionals, that we were anxious to process an examination as soon as practical to replace the provisionals with qualified people from a civil service eligible list.

I asked them to arrange a series of meetings, a series of visits, to permit me to obtain in greater detail all the necessary factors that should go into the preparation of a valid examination. Mr. Magelli did so arrange. There were also conditions I arranged which I should go into.

Q Please.

A I advised him under the policy guidelines of the commission I only wished to see permanent incumbents in the appropriate titles. I will restrict myself from now on to the supervising level only.

I advised him that I wished to see only permanent incumbents in the title of supervising human resources specialist, whether generic or specialties, or permanent incumbents who were supervisors of such people -- namely, principal human resources specialists who might be either permanent supervising and provisional principal or permanent principal human resources specialists, and also any higher officials in the HRA hierarchy.

I said I would be willing to meet with and discuss matters with himself, with the personnel director, with any commissioners, with any other non-competitive or exempt high officials in HRA or its agencies that are under that umbrella.

And Mr. Matelli did arrange such a series of meetings, interviews, in which I went and met with and discussed and observed all factors to the greatest extent possible appropriate to get a clear picture of the total position of supervising human resources specialist.

As a result of those meetings, I prepared the document that I believe at that point in time we called a field audit which we now commonly call a job audit.

Q Is this the document you prepared?

A Yes, it is.

MS. OMANSKY: I believe you have this, but I would like this marked as well.

THE COURT: That will be F.

(Defendants' Exhibit F marked for identification.)

MS. OMANSKY: I would like to offer that.

THE COURT: This is part of earlier papers,

you mean, Ms. Omansky?

MS. OMANSKY: Yes.

THE COURT: May I take a brief look at it? I can look at it with different eyes now.

MS. OMANSKY: Yes.

THE COURT: Mr. Rosenberg, I don't know if you can remember this field audit well enough to answer this question without a copy in front of you, but it is probably in general form.

On page 2 it says, "Tasks learned about through interviews," and you list a number of them, starting out with "Negotiation for funds to permit on-the-job development of disadvantaged residents of poverty areas of NYC."

In parentheses next to that you have a bunch of Roman numerals, eight in this case. What do they refer to?

THE WITNESS: They refer to the areas that I determined that that type of task relates to in the text plan that we developed as a result.

THE COURT: Which you later developed?

THE WITNESS: Yes.

THE COURT: Thank you.

MS. OMANSKY: As long as we have mentioned

mdal0 Rosenberg-direct

the test plan --

THE WITNESS: It is in the job audit.

MS. OMANSKY: It also refers to the knowledges and skills at the bottom of page 2.

THE WITNESS: Which is in effect the test pl

THE COURT: I was thrown off because the are Arabic numbers to begin with, but I see that on the other side they were related to Roman numerals.

BY MS. OMANSKY:

Q I ask you to identify these two documents.

MS. OMANSKY: May I have them marked?

THE COURT: I believe Exhibit F can be admitted in evidence. I assume you have no objection.

MR. MINTZ: That's right.

(Defendants' Exhibit F was received in evidence.)

(Defendants' Exhibits G1 and G2 were marked for identification.)

MS. OMANSKY: I would like to offer these in evidence.

MR. MINTZ: No objection.

THE COURT: Get the witness to tell us

first what they are and how they came about.

BY MS. OMANSKY:

Q What are those documents, Mr. Rosenberg?

A I believe I have explained the first document in general.

THE COURT: Is that Exhibit G?

THE WITNESS: No, that is Exhibit F.

THE COURT: I understand what that is. That is in evidence already.

A Now, from that document we draw up a test plan, and in this case I personally prepared the test plan for the promotion examination to supervising human resources specialist, examination 1631.

THE COURT: And what exhibit is that there?

THE WITNESS: That would be G1?

THE COURT: Okay.

A G2 is the comparable test plan for the open competitive examination for supervising human resources specialist, exam No. 2013.

THE COURT: Right.

A The two documents are identical, except with respect to I, which varies in specifics, though in the same general area.

THE COURT: What is the area?

THE WITNESS: Operations of government and relevant public and private agents.

In the promotion examination we included specifically functions of the Human Resources Administration and its constituent agencies as the primary focus, because on a promotion examination we believe that this is fair and proper knowledge for people taking a promotion examination in the agency in which they work.

In the 2013, which is an open competitive examination, and while some individuals might work for the Human Resources Administration and could take that examination, we also envisaged large numbers of individuals not associated with the agency as being applicants, so we left in the broader context of functions of relevant public and private agencies in this area of antipoverty and related activities.

Otherwise, the test plan proper, the eight categories, remain the same and the percentages of weight to each o ne of these factors remained constant.

But the second document --

BY MS. OMANSKY:

Q Before you get, Mr. Rosenberg, to the percentage and weight, on the job audit it says "Knowledge and skills required." What did you mean by that?

A We list that category to reflect the essential factors that we believe are necessary to perform satisfactorily at this title, and within that framework this is the scope and the extent of the examination that we were going to give to determine whether or not the individual is qualified to have the title.

Q What factors do you take into consideration in determining whether a knowledge is critical?

A We went through and saw individuals in the title as well as a number of their supervisors and superiors. We also had, naturally, the previous exam ads --

Q No, I understand the process, but how did you determine that familiarity with developments and problems was an essential skill sufficient to be highlighted in the knowledge and skills? In other words, there must have been some determination made as to which knowledge and skills were required?

A Yes. Based on all the work we had done I analyzed each and every one of the functions, activities, jobs, duties, and determined that they fit into certain common areas regardless of the nature of the title of the individual that I had seen or observed or worked with and as a result came up with the

eight categories that became, in effect, the test plan.

THE COURT: Did you do that alone or were there several of you that reached this decision about the eight categories?

THE WITNESS: It was primarily my decision. It was reviewed with the individual who was the chief of the division.

THE COURT: Of your division?

THE WITNESS: Of my division. It is also then further reviewed by the director of examinat. and goes to the commission for its determination as well.

Q What about the agency, HRA; what documents did they see?

A The agency sees the examination advertisement, which is the final end product of the entire process, and that document contains in its test section in effect the wording similar to the test plan in terms of the areas to be tested.

That document is forwarded to the agency, and I might add that with respect to this examination specifically the agency had made known to me in the preliminary stage of the job audit that they wished to review the notice of examination, and in fact that was done.

THE COURT: You mean it was done before it became final?

THE WITNESS: That is right, before the Commission finally acted.

THE COURT: Did they propose any changes in your draft or did they accept it as a draft, or what happened?

THE WITNESS: I think I had better not testify. I had already left the Division before that.

THE COURT: So you don't know?

THE WITNESS: So I don't know.

BY MS. OMANSKY:

Q Now, on the test plan that you have in front of you there are certain numerical figures, certain numerical percentages?

A Yes.

Q What do they represent?

A As can be seen on the form itself --

THE COURT: Which exhibit is that?

THE WITNESS: We are now talking about the test plans G-1 and G-2.

THE COURT: All right.

THE WITNESS: The body of the form is listed under two categories, Areas to be Covered and Relative Emphasis.

I have explained how we came to the Areas to be

Covered, and now we are discussing how did we determine Relative Emphasis of each of those eight categories to the total score.

This is a combination of it, of the incidence of the performance of specific types of duties and the essential importance, the criticality of the types of decisions that would impinge on knowledge or lack of knowledge in the specific areas.

A mix of the two comes up to the relative emphasis, and, as can e seen on these test plans, the weighting varied from 5 to 20 per cent for any one category.

THE COURT: Can I be shown an example?

When you say it varied from 5o to 20 per cent, you mean there were some items which were as low as 5 per cent and some items which were as high 20 per cent, is that right?

THE WITNESS: That is correct.

THE COURT: What does it mean when it says "about"? It says relative emphasis in the column and says "About 15 per cent."

Does that leave discretion to anybody?

THE WITNESS: Yes, in the preparation of individual questions.

Now, I am speaking generally, not about this one

specifically. There will be, I believe, another witness from the City who was responsible for the actual preparation of the examination, but, in general, we do not feel that in an examination it is proper to insist on exact, a 1 per cent type situation; that a certain degree of judgment has to be left to the examiner as long as they remain within the framework of the examination test plan.

THE COURT: Well, with regard to No. 4, for example, there is a 20 per cent relative emphasis.

THE WITNESS: Yes?

THE COURT: How much variation would the examiner be entitled to exercise as a matter of discretion within the "about" definition?

THE WITNESS: I would say that normally we would have within 5 per cent either way of any one factor as a factor.

THE COURT: Well, in the case of a 5 per cent factor, that could be no emphasis?

THE WITNESS: I mean 5 per cent of that.

THE COURT: Of itself?

THE WITNESS: Of itself.

THE COURT: Now this exhibit, which is G-2, this is a test plan and you were primarily responsible for preparing this test plan, is that right?

THE WITNESS: If I might explain on that:

If you will notice the one you are holding, which is G-2 is not signed by me --

THE COURT: No, it was prepared by Larry Fishbein.

THE WITNESS: Larry Fishbein, who was another examiner in Examining Division S, and you will note that the date, I believe, is in May --

THE COURT: Yes?

THE WITNESS: The one I am looking at, 1631, which is signed by me, is dated February 4th. So that I am just noting that these two were prepared in different points of time, and, actually, there was a major reorganization in the department and in the bureau as a result of examinatiosn having been given, in which I left, and Mr. Buchman who signed as the acting division chief is no longer signing that one, and Dr. Philip Segal --

THE COURT: I understand that. Thank you for pointing it out to me.

But let us go back to G-1 which you prepared and G-2 --

THE WITNESS: Essentially the same --

THE COURT: -- the same kind of thing for the competitive exam, signed by Mr. Fishbein?

THE WITNESS: Yes.

THE COURT: Now, those are just test plans, is that right?

THE WITNESS: That is right.

THE COURT: This is to lay out the kind of a test you would like to have?

THE WITNESS: Exactly.

THE COURT: And that somebody actually made up the exam, is that right?

THE WITNESS: That is right. Mrs. Willingham.

THE COURT: In this case somebody made out the exam?

THE WITNESS: In this case, because of the reassignment.

THE COURT: Thank you.

BY MS. OMANSKY:

Q Now, Mr. Rosenberg, the first exam for Supervising Human Resources Specialist given in 1968 was a training and experience exam?

A That is correct.

Q Now, did you consider whether a training and experience exam should be given for this test?

A Yes, certainly.

At the point that I went to do my job audit, I was

completely open as to what type of selection device we should use for this series; and, theoretically, a training and experience examination could be given, but I determined on the basis of the job audit and also based on certain practical test situations, that the appropriate examination should be, at least in part, a written examination of a multiple choice type.

Q You said that it had been determined to give a promotion exam anyhow?

A Yes. A promotion examination is required by Commission rules whenever it is practicable to so do.

Q Now, are there any considerations with a training and experiencing exam in the context of giving a promotional exam?

A Yes, there are. There are practical matters as well as the facts contained in the job audit.

A training and experience examination is one in which any individual possessing the minimum requirements announced for the examination must receive a passing grade, because otherwise you are playing false with people who are filing for your examination. It is -- how shall I put it -- a silly situation which the Commission would not be a party to.

If an individual is qualified to apply and be

accepted as qualified, is eligible to take the examination, and it is a training and experience examination, by definition the individual must receive a minimum passing grade.

Now let us go specifically to this situation, Supervising Human Resources Specialist --

THE COURT: A training and experience examination, although so called by the Commission, is not what the layman would call an examination, is it?

THE WITNESS: That is right.

THE COURT: There is no writing; there are no questions?

THE WITNESS: No.

THE COURT: You find out whether in your opinion you believe this man, on the basis of what he has done and the training he has received, can do the job, and this is what the examination consists of?

THE WITNESS: And if I can go a step further, in connection with a promotion examination the Commission has declared who is eligible to file.

Any individual who has performed in the next lower title, or whatever title is listed in the examination announcement, and has served in that title on a permanent basis for six months is eligible; and any individual who

has served in that next lower title one year at that point in time is eligible to be promoted.

THE COURT: You mean whether he permanent or not?

THE WINTESS: No. One year of permanent service in the next lower title.

THE COURT: What is the six months requirement?

THE WITNESS: Just to be eligible to file for the examination. But if the list came out, say, in two months even though he has received a passing grade, for example, he still would be passed over until he has his one year, and if after he has his year there still is an opening, then he can be appointed.

THE COURT: Go ahead while I still understand it.

THE WITNESS: Okay.

In this situation if we made a training and experience examination for promotion to Supervising Human Resources Specialist, there were actually more provisionals serving in the title of Supervising Human Resources Specialist than there were eligibles to take the examination who had the permanent title of Senior Human Resources Specialist and, in effect, we would be saying it is an automatic promotion for each and every individual in the title of Senior, that he is qualified or she is qualified to be a Supervising Human Resources Specialist. And this is not

necessarily so. So this would be another persuasive argument as to why we would not give a training and experience promotion examination.

THE COURT: I would suggest we take the morning recess at this time.

MS. OMANSKY: I think I am going to be finished -- I think I am finished with my examination.

THE COURT: Well, whether you are finished or not, we will take a 10-minute recess.

(Recess.)

BY MS. ONANSKY:

Q Mr. Rosenberg, did you prepare the examinations for supervising human resources specialist?

A The actual examination was not my responsibility because, as I previously said, almost instantaneously with the preparation of the job audit I was promoted to administrative personnel examiner and was assigned as of about March 1st as assistant chief of Examining Division A, a comparable division to Examining Division S, but with a different focus of titles as their responsibility.

MS. ONANSKY: No further questions.

THE COURT: Mr. Mintz, do you have any questions?

MR. MINTZ: Yes, your Honor.

CROSS EXAMINATION BY

BY MR. MINTZ:

Q I would like to return for a moment to the original examination given the first time for the position of supervising human resources specialist, the training-experience exam.

What role, if any, did you have in that examination?

A None.

Q Did you develop any familiarity with it through your work in the later examination?

A The examination itself?

Q Yes.

A No.

Q Well, then, your identification of Defendants' Exhibit E, which is the experience key -- you are familiar with that?

A Yes.

Q -- is based solely on just your general knowledge of the operations of the department?

A No. In connection with the assembling of documents for this trial I officially obtained that, among other documents.

Q There is a point I am concerned about, and I don't know if you know the answer or not, and hopefully you can settle it. This training-experience key does not --

THE COURT: Refer to it by exhibit number for the record.

Q -- Defendants' Exhibit E does not on its face indicate anything to do with specialties, and yet you have indicated in your testimony on direct that only appointments to specialty positions, specifically manage-

ment, HDT, and community programs, were made from this examination.

A Yes.

Q Do you know how lists in specialties were made from this general key?

A Yes. As I explained, while I was dealing with the provisional applications that were coming into Examining Division S I was using the examination ad, No. 7714, I believe, as the document that I was using to determine if an individual was qualified or not to serve as a supervising human resources specialist.

I became aware, as a result of this type of an assignment, that there were lists in each of the specialties, and I believe they were exhausted in about April of 1971 in each of the specialties.

I also determined that no list was promulgated generically. There was no generic list.

THE COURT: I am not quite clear whether you are saying in the course of your investigation to prepare for this trial you found out that these things had occurred --

THE WITNESS: No, no.

THE COURT: Or whether you actually participated at the time.

THE WITNESS: No, I was not involved at the time in reviewing the qualifications of any individual, that all took place before. What I became aware of in '70 and '71 was that these lists had been in existence because one of our functions is to insure that if a list is in existence, why isn't the list being used.

THE COURT: I understand that, but I would like to know, and I think probably Mr. Mintz is asking this, too, if you know how your department or your bureau, personnel, in other words, went about choosing people for the list of, let's say, Manpower Development from an exam which appears to be so general in character.

THE WITNESS: Yes, I do know.

THE COURT: Can you tell us?

THE WITNESS: Yes.

After the people submit their application form for the examination they are rated according to the key. Then the individual reviews the exact area that the person had performed their work in or had their education in, and if you will notice the examination ad specified different types of work apply to each of the three different specialties. Certain types of experience qualified for all three, some qualified for

two, some qualified only for one. And based on the exact totaling of an individual's experience for each of the three areas as listed in the examination ad the individuals are placed on one, two or three lists.

THE COURT: All right.

Q Let me rephrase that in terms that I can understand, and I ask you to tell me whether this is correct.

A person would submit an application in which they would state their qualifications and experience. On the basis of that --

A And he had.

Q -- and he had, right, I am including that in qualifications -- on the basis of that it would be determined whether they fit, whether they had the experience required in about the middle of the first column of Defendants' Exhibit C, where there are listings for the specialty of management followed by several areas in the specialty of community programs, etc.

They would be rated, however -- once they were plugged into one or more of those areas they would be rated on the same key, is that the way it works?

A Yes.

Q So they were really placed in the specialty

before they were rated, depending on their experience?

A No, they have to -- let me put it this way. They review the form against all three to determine, first, if the individual is qualified for any one of them or not at all. So there is an initial review to determine did they meet the minimum requirements for any one of them prior to any breakdown into the three.

So in terms of which order the examiner might have done the specific rating I can't answer to that specifically, but the picture, the nature of it, is as you have described.

THE COURT: I don't know if it is relevant to the issues before me, but I would like to learn these things once and for all.

When the examination is given is the applicant rated in terms of percentage or passed or failed?

THE WITNESS: No, it is ranked in particular grades.

THE COURT: This particular one in 1968, where there were three subspecialties, let us assume a man was found to be eligible, if that is the right word to use --

THE WITNESS: Yes.

THE COURT: -- in all three, we get a separate

rating in all three.

THE WITNESS: Yes.

THE COURT: And the rating in one specialty might be different than in another?

THE WITNESS: Right.

THE COURT: Are the jobs then given in accordance with those ratings?

THE WITNESS: Yes.

THE COURT: Depending on the number of openings, I guess. If there are enough openings for everybody the rating is academic.

THE WITNESS: Yes. The lists are certified to the agency in numerical order. The agency at that point in time had a choice of three for each opening.

THE COURT: And under the new administration I presume there is going to be one?

THE WITNESS: It is presumably one.

THE COURT: Thank you.

Mr. Mintz, will you continue.

MR. MINTZ: Regrettably, I thought I understood it, and now the court's question has confused me; at least in answer to it.

THE COURT: I am glad it's the answer and not the question.

Q Let me try this by example. Let's say John Smith makes an application for this position, his application contains all his education and experience, this is given to someone in the Department of Personnel who compares it with the qualifications to determine he has the experience and education required for both the management and MDT specialties but not community planning, let's just take that as an example.

He is then rated according to this key. Wouldn't he in fact have to have the identical score, because the key says he gets six points for each year in a poverty program, four points for each year in a nonpoverty program. It doesn't say he gets more points if his experience is in labor relations, which is an area more relevant, or industrial relations, which is an area more relevant to MDT than management?

A May I see that?

Let's take an individual who had x number of years in fiscal control and a lesser number of years in vocational or educational counseling, although he has both and that is why he was qualified for both. I would presume there could be a different rating for that individual because they wouldn't be using any of his experience in fiscal control to give him credit for

manpower development and training, and, conversely, if he had more time in vocational or educational counseling they wouldn't be giving him credit for that in management, so there could be different grades.

THE COURT: I brought this up myself. I don't know if it relates to the issue before us anyway. I just wanted to understand what the general procedure is.

MR. MINTZ: I will leave it at that. I am not sure I understand that, but --

THE COURT: I will explain it to you later.

BY MR. MINTZ:

Q Let's pass on then to the actual work relevant to the two examinations in issue here.

What was the date, approximately, when you first became involved in this?

A By "this" --

Q By "this" I mean the work which eventually led to the production of the two examinations in issue.

A Upon my assignment to work in Division S in early 1970.

Q You actually conducted your field audit between October 1st and October 7th of 1971, according to Defendants' Exhibit F. During the better than a

year and a half between the time you first became involved in the field audit what sort of things did you do in this connection?

A Among my responsibilities in Examining Division S, based, I imagine, in large part upon my long experience in the Bureau of Classification and Compensation, among my other responsibilities was the handling of classification matters that were assigned to Examining Division S.

I might explain that in the reorganization in which the Bureau of Examinations took over classification responsibilities that had formerly been performed in the Bureau of Classification and Compensation, since classification matters can impinge directly on examining matters, such as titles, duties, responsibilities, qualification requirements, etc., this function was assigned to the Bureau of Examinations.

In addition to the provisional applications that I have already alluded to, I also received a request from the Human Resources Administration to audit the Community Development -- Manpower and Career Development Agency's field offices to determine if certain positions that were then classified as principal human resources specialist should not in fact be noncompetitive title of

regional director.

So I did an extensive study of the field operations of the Manpower and Career Development Agency, which was one of the agencies that comprise the Human Resources Administration.

THE COURT: May I ask you whether you are trying to tell us that you not only had responsibility for developing these exams during this period and you were doing other things as well, or that the things you are describing were part of the process of preparing the exam?

THE WITNESS: No.

THE COURT: I think Mr. Mintz is asking, and in my opinion I think we only need to know, what you were doing with relation to the exams themselves during this period of a year and a half. Isn't that what you are asking?

MR. MINTZ: That is correct. But, of course, if he was doing things closely related and eventually had input into this --

THE COURT: That's why I ask do you believe they did have input?

THE WITNESS: Definitely.

THE COURT: Then I agree and ask you to

continue.

THE WITNESS: It went into the fund of knowledge I was bringing into this examination.

THE COURT: How much of your time would you say you were spending on HRA matters during the year and a half in question?

THE WITNESS: I would say approximately 50 per cent of my time.

BY MR. MINTZ:

Q And much of that 50 per cent of your time was involved with Manpower Development?

A No, much more was in connection with the title structure itself, qualification requirements on an open competitive basis for the next series, among other things, the review of the provisional applications, which was quite heavy, classification studies such as the one I just mentioned. This was one of the more extensive ones that I was involved in, which is why I mentioned it in detail. But there were others as well.

Q In addition to performing the field audit for sup-HRS, you also did the field audits for senior and HRS itself, for the generic titles, is that correct?

A I did the audits for both the generic and if it was decided to give specialties for that as well, as well as specifically the Manpower Development and Training, because there were a number of provisionals in that specialty at each rank.

Q You are saying you did do the field audit in MDT?

A Yes, I believe so.

THE COURT: The field audit for the purpose of preparing the test plan, you mean?

THE WITNESS: I am not absolutely positive.

THE COURT: You did a field audit, though?

THE WITNESS: Yes.

Q Without identifying this, I have here a field audit dated May 12th, relating to a visit to MDT agencies on May 2nd for the open competitive examination, human resources specialist (MDT) done by Larry Fishbein and Charles Wachter.

THE COURT: What year is that?

MR. MINTZ: This is dated May 12, 1972.

THE COURT: By that time you were no longer there?

THE WITNESS: Right.

Q Does that refresh your recollection to the

extent that you in fact did not do the field audit which led to the test plan for the MDT specialty of HRS titles?

A No.

THE COURT: Before Mr. Rosenberg answers that, may I clarify it? I thought we were talking up to this point about a period back in 1968 with regard to the original training and experience exam.

MR. MINTZ: I am finding my confusion about that process was perhaps insurmountable and I went ahead to the point where we are actually dealing with the two tests at issue.

THE COURT: Then we started dealing with the period between early 1970 and October of 1971?

MR. MINTZ: That's correct.

THE COURT: You mean the fact there was an audit done in 1972 might refresh Mr. Rosenberg's recollection that he did not do one during the period from early 1970 to October of 1971?

MR. MINTZ: That's correct.

A I don't have a firm knowledge as to whether I did the field audits for MDT. We didn't do any preparation for this since that was not part of this suit. I have some recollection I probably did some of the MDT

but I could be wrong.

Q We go then to the period from October 1st to the 7th, which eventually resulted for the test plan for the examinations in issue. Did you at the same time do the field audit forthe two lower titles?

A To the best of my memory, yes.

THE COURT: That's just human resources specialist and senior human resources specialist?

THE WITNESS: Yes.

Q So during that seven-day period you were in fact interviewing and observing people with relevancy to three different titles at three levels?

A That's correct.

Q You stated that you avoided, and specifically in your prior conferences with Mr. Matelli you said you would avoid, any contact with people who were not permanent sup-HR5's or above.

A By contact I meant interviewing. I did observe a large number of people who might or might not have been provisionals since I didn't inquire per se. I only dealt in a verbal manner interviewing only the people as I specified.

Q On Defendants' Exhibit F, which is your field audit report, you list several names, referring to the

bottom of page 1, particularly supervising human resources specialist interviewed and observed is onecategory followed by four names, and their titles, and the second category, persons interviewed to confirm, clarify, augment or provide additional information, and there you list what appears to be four more names.

Did you in fact observe the work of others in addition to those eight people?

A Yes.

Q Did you collect their names?

A No.

Q Why not?

A It wasn't deemed necessary. There were no guidelines that said it was necessary. I observed the operations in the offices as live action, and I did not collect their names.

THE COURT: And I didn't know this lawsuit was coming.

THE WITNESS: No, I am afraid not.

Q Do you know or do you recall how many permanent supervising human resources specialists there were at the time you conducted this field audit?

A I am not absolutely positive. Not many. Very few, in fact.

Q Less than 10.

A I would presume, but I am under oath. I am not positive.

Q I refer you to defendants' answers to interrogatories, answer No. 3, table 2, the second page of printed material, which gives at the bottom of that page the number of people who were permanent appointments to supervising HRS at the time of these answers, which was approximately a month or two ago. It indicates there that there are eight permanent supervising HRS's.

A No. It indicates a total of seven.

Q I am sorry. you are correct.

Does that refresh your recollection as to how many there were at the time you did your field audit?

A No, but I presume it is around that same number. I saw four, which would indicate I saw, according to these figures, over 50 per cent.

Q Most of the people performing at that title --

A By "saw" I mean interviewed.

Q Most of the people performing at that title were provisionals in excess of 150 or 175, is that correct?

A I believe at that point in time there might have been around 100 provisionals, but anyway certainly

a very, very large number.

Q And you interviewed, to your knowledge, none of them?

A No. As I explained the guidelines of the commission are to interview only permanents.

THE COURT: What is the rational of that, do you know?

THE WITNESS: Yes. Examinations by the commission are administered within a framework of strict security so as not to provide unfair advantage or deprivation for anyone, and --

THE COURT: The theory is that somebody might not know what the subjects would be on the exam? I don't mean deliberately.

THE WITNESS: No, I don't think it is even that. In seeing people who are provisionals and then obviously would be candidates, almost obviously would be candidates, by virtue of having the contact with the person who was gathering the material to prepare for the examination, that in and of itself is perhaps an unfair advantage, so we stay away from them.

THE COURT: Okay.

BY MR. MINTZ:

Q Following this guideline necessarily restricted

you to interview contact with only a very small number of supervising HRS's?

MS. OMANSKY: I object to that because I think Mr. Rosenberg said in fact it was over 50 per cent.

THE COURT: Let's not argue about that. We have the figures on the record and you can argue as you wish on that.

THE WITNESS: If I might comment, though --

THE COURT: I think it would be better if we just stick with the questions. But it is correct, isn't it, Mr. Rosenberg, that these are the figures? There were less than 10, maybe seven or eight, permanent. You interviewed four.

THE WITNESS: That's correct.

THE COURT: And there were maybe a hundred provisionals and you didn't interview them?

THE WITNESS: That's correct.

THE COURT: I would like to ask you this one question. If there had been -- I know this is hypothetical, but putting it a different way, is there any guideline by which you determine the number of people in an occupation or the percentage of people who are permanent in an occupation that you normally do interview

in preparin- a test plan or an exam?

THE WITNESS: It is flexible. We give examinations that vary for positions with many thousands of incumbents, to positions where the incumbents are one, two, five or ten. Obviously, this affects that framework, so there are no percentages as such, obviously.

THE COURT: What would you consider a fair sampling of a group in which there may be a hundred people involved?

THE WITNESS: It depends on (a) the individual who is assigned the examination, the degree to which that individual is aware of the operations of the agency, the types of contacts and the levels of contacts that individual has with that agency on a day-to-day basis, it depends on how long they have been working in this agency and what they are bringing to this process.

It also depends upon examination work load; frameworks. We try between the interviews, the observations and in interviews with higher authority, we try to get -- and I would say our normal audit process varies from a few days to maybe a week or two in the field getting in within that period the broadest type of mix of these different types of things to come up with the best possible picture of the position that we can come up with to give the examination.

BY MR. MINTZ:

Q Mr. Rosenberg, wasn't this audit or these audits collectively for the three HRS titles the first which you yourself had done for the purpose of developing examinations?

A Yes, as a job audit specifically for the writing of an examination, and this was the first I performed. But as I pointed out earlier, I had performed thousands of desk audits which deal with similar types of analyses for broader purposes than just preparing specifically for an exact examination.

Q What are those broader purposes?

A The desk orders that we engaged in in the '50s are to, (A) gather materials to make more accurate descriptions of positions in the city service for test purposes, among others.

It also was used to determine whether an individual was performing in title work or out of title work based on the duties as against the civil service duties of the incumbent.

It was also used to prepare class specifications to set up minimum requirements and duties and responsibilities for each position in the city service. It was also used for salary purposes to determine the relative value of one city position as against another, to help decide to what salary

range individual titles should be allocated to, and subsequently was used in collective bargaining negotiations as well.

It further was used extensively by the Bureau of Examinations -- the materials we gathered were used to prepare exact direct job related questions for use on examinations.

So it had a much wider type of application than the specific job audits which are aimed specifically with coming up with the necessary factors which would go into an examination.

Q In your opinion, and based on your experience, is it necessary to know more about a job in order to prepare an examination for it than for the purpose of classification and salary structure, that type of thing?

A Equally. They are equally -- the ranks of the people who do these separate things, or did these separate things were comparable.

Q If you say it is an equal amount of information, is it also the same type of information, in your opinion?

A Well, they are very closely related, still dealing specifically with the position, what the person does and how he does it, et cetera.

Q I refer you again to Defendants' Exhibit F --

THE COURT: What is Exhibit F?

MR. MINTZ: F is the field audit report dated February 4 for the key test in issue. I have a photocopy of that in front of me.

BY MR. MINTZ:

Q Again referring to the part, about a little more than halfway down on the first page where you list the Supervising Human Resources, you interviewed the first one, Mr. Louis Bellow as a specialist in Manpower Development and Training, is that correct?

A That was his civil service title.

Q Where was he, in fact, if you recall, employed?

A I am not positive of his work location. I believe he was the gentleman who was engaged in purchasing activities for either one of the component agencies or HRA itself.

Q This audit did not, and you have now recalled, I believe, that you, in fact, did not prepare the audit which led to the test plan and the eventual test for the MDT specialty?

A At the HRS level, obviously. I don't remember specifically whether or not I did for the MDT supervising.

THE COURT: What is HRS?

THE WITNESS: Human Resources Specialists.

MR.MINTZ: Now, rather than taking the time, I will

locate that document later on.

BY MR. MINTZ:

Q Do you recall whether or not the second person listed, Ruth Ribuoli, was performing work in any particular specialty?

A No. Her title was Permanent Supervising Human Resources Specialist, and a good question might be how if they only list three specialties didshe get the title of Supervising Human Resources Specialist?

And the answer is --

THE COURT: Without a parenthetical, you mean?

THE WITNESS: Without a parenthetical.

There were a very small number of people who held other civil service titles at the same salary rank as Supervising Human Resources Specialist and who were working in the Human Resources Administration or one of its subdivisions, and we have a rule in the Commission that where an individual takes a lateral movement from one civil service title to another civil service title, where the salary does not change as a result of the transfer, where the opportunities for the future are better, we permit such a change by a specific examination under a rule of the Commission, and I presume that she was one such individual.

THE COURT: All right.

Q That is the way to get a permanent civil service title without taking any examination?

A Oh, no; she had to have permanent status in the other comparable civil service title.

Q But she got this title without an additional examination?

A Yes. She took an examination originally for a comparable level civil service title, and was appointed from that list, and then moved laterally to this.

Q Do you recall whatkind of work she did, or what agency was she in, and what she did?

A Again, I do not recall specifically the agency. If my recollection is correct - and that is all I am stating - it is a recollection - she was a creative writer involved in the preparation of television programming dealing with subject matter areas of the Human Resources Administration.

Q Then her work was in what might be called public relations?

A No. It is a skilled writing type of position.

Q Did you take notes at the time which you have preserved to this day?

A No. Unfortunately, no.

Q Mr. Allan Ripan, the third person listed; do you recall with any precision what kind of work he did?

A No.

Q How about Lois Williams?

A If I recall correctly, Lois Williams was involved in building operations, arranging for communication systems for use within the Human Resources Administration, material in that area.

Q Then you did not interview, whether because of guidelines about seeing only permanence or otherwise, people in many of the sub agencies of HRA performing at Supervising Human Resources Specialist level, for example, people in the Agency for Child Development, Youth Services Administration, people performing fiscal tasks, personnel tasks?

A No. I did see in connection with some of the other orders people that might have been in various of those. I don't believe I was in YSA at all.

As I say, I did bring to it the types of experiences I had had previously, such as the one I described in the Manpower and Career Development Agency where I did an audit of the field operations of that agency.

Q Referring you to the next paragraph, to the best of your recollection what information did Mr. Howard Matelli supply you with which assisted in the devlopment of the job audit?

A It is too far in the past. I did not retain my notes. I can just say that all the material listed in this report came out of the total of what was described here.

Q The third person listed in that section, Mr. Javier Antompiertri, do you have any recollection of your contact with him?

A Just to the extent that I know that he was in charge of budget review of the Community Development Agency.

Q Which is what it says on this sheet?

A Yes.

Q You have no recollection beyond --

A Specifics from any individual as such, no.

Q You are not aware, I take it, then, Mr. Rosenberg, that in your contact with Mr. Antompietri you perhaps inadvertently violated the guidelines about not speaking to people who would be taking the examination you would be preparing?

A Obviously.

Q Mr. Antompietri did take Exam 2013, because his appointment was only provisional. You didn't know that at the time you saw him?

A No. If I did I wouldn't have seen him.

Q Referring to Plaintiffs' Exhibit 1-D, the computer

printout of the persons who took the Examination 2013, Mr. Antompietri's name appears as No. 0061 on that list, and he regretably got no benefit from his contact because he failed the examination --

THE COURT: Maybe he would have done worse if he had not been interviewed.

MR.MINTZ: That we will never know.

Q Now, you stated that your work product, the field audit report and the test plan were reviewed by your superiors in the Department of Personnel.

I am not sure whether I understood they were, in fact, made available to a review by anyone in HRA?

A The test plan is repeated in total, the areas, without relative percentages, is contained in the examination announcement. That document is reviewed in the agency.

THE COURT: When you say that the percentages are not --

THE WITNESS: I am not included.

THE COURT: -- does that mean, for example, that when the notice was given for approval to HRA, that they would know what the areas were but not what the percentages were?

THE WITNESS: That is right.

BY MR. MINTZ:

Q Then, to your knowledge, no one at HRA saw Defendants' Exhibit F, the field audit report, or G-1 or G-2, the test plans, prior to the giving of the examination, at least?

A I can't testify absolutely. I presume that they did not.

Q What would be the reason for permitting HRA to see only the documents essentially available to anyone, the notice of examination and list of qualifications and not the field audit report and test plan?

A Solely because these other documents are internal working documents of our department, and they are not made accessible to anyone outside the agency.

Q Doesn't that procedure -- I am not trying not to be argumentative with you, Mr. Rosenberg, but doesn't that procedure deprive you of possibly relevant information?

For example, if some knowledgeable person at HRA who is very familiar with the work of this title were to see your test plan and say, "I feel there is an area which you are overemphasizing or underemphasizing in these percentages, and this is why" - wouldn't that be of help to you in preparing a better test?

A I think here we have to depend upon the judgment

of the examiners and the strictures on confidentiality, and so forth, as to whether or not certain data should or should not be made available outside the department.

THE COURT: Well, Mr. Rosenberg, I think you are answering why the procedures that have been followed have been followed. But you are not answering if you can, Mr. Mintz' question whether you believed as a specialist in this field you could get useful information if you were allowed to make this information available to the top people in HRA?

THE WITNESS: You mean in terms of the weighting of the different categories?

THE COURT: Yes.

THE WITNESS: No, I personally don't think so.

BY MR. MINTZ:

Q Was there any comment from anyone at HRA regarding the eight areas covered which were made available to them in the test announcement?

A I can't answer that because I had already left Division S by the time they would be receiving these documents.

Q Incidentally, for a point of clarification, what is Division S? Is it any different from any other alphabetical or otherwise identified divisions?

A Well, the letter is used to designate an area of responsibility of the division. In this case S stands for Social Services, and a wide variety of other professional titles as well. And Human Resources fell under the general framework of Social Services.

Q And other examining divisions of the Department of Personnel might have other letters --

A Yes, which would stand for other divisions. For example, Division A, which is the division I went to, and its responsibility is administrative.

Q Now, on the basis of your interviews and observations did you find that supervision, that is, the actual responsibility for subordinates, was common to every Supervising Human Resources Specialist?

A If I recall correctly, other than the Ribuoli position, supervision was an important factor.

Q Of the four people you interviewed, one had a little or no supervisory responsibility?

A That is right.

Q Was this borne out by your additional observations, such as they were, of other supervising HRS personnel, that some of them had, in fact, no supervisory responsibility, or very little?

A A limited number do not. I would suggest that

most did.

And as I stated, I believe in the weighting of this, it ended up about -- what is it -- about 20 per cent of the total.

Q That was my next question. You have anticipated it. In view of the fact that one of the four people you have interviewed, and some number of those you observed, in fact did not supervise, how did you determine that a major portion of the examination, 20 per cent, should be on supervision?

A Because on an overall basis, when you deal with a hundred per cent of all the positions and all the factors, this one loomed to be one of the absolute top items; and, as I say, we had 8 categories ranging anywhere from 5 per cent to 20 per cent for any one factor.

And, certainly, supervision on the basis of everything we knew, and as borne out in this field audit, the job audit, as it is now called, this certainly should be because individuals today may be supervisors and tomorrow can get a reassignment to another position where it is not a factor. But still within the context of the position this is a very important factor.

THE COURT: Does the mere fact that the title about which we are talking is called supervising HRS, does

that mean anything?

THE WITNESS: Not necessarily. It is --

THE COURT: You have answered.

THE WITNESS: It is a way of grading.

THE COURT: Okay. It means that there are a limited number of words in the English language you can use for grading.

THE WITNESS: Another alternate method is using 1, 2, 3, 4, 5.

THE COURT: But it does not imply that you are likely to be supervising somebody else?

THE WITNESS: As I recall, for most of the descriptions you have seen, supervision is probably a major one in this series in this level.

THE COURT: But that conclusion you reached on the basis of your audit, not because of the title?

THE WITNESS: That is correct.

BY MR. MINTZ:

Q If a person were, in fact, hired for a position such as Miss Ribuoli, where there was very little or no supervising that had another important skill necessary to perform the job, would this examination resulting from your test plan be less relevant to her work?

A Again, we are not giving an examination for each

and every position that holds the title of Supervising Human Resources Specialist. We aregiving an examination for the title which encompasses a variety of people in various types of activities, with different types of responsibilities, though essentially all being considered similarly alike to warrant the same title and the same pay.

We were giving an examination on the basis of all the knowledge we had for the total position which now, at that point in time, comprised over a hundred individuals, and might grow more or might shrink. We didn't know what the future would bring.

And we devised a plan that tests for the ability of the individual so that even if they get transferred -- and people do get transferred; I believe it was testified to in this trial that people went from one place to another -- and we devised an examination appropriate to perform satisfactorily regardless of the exact assignment that the individual might receive at any one point in time.

Q Let me go back, then, because this is I think, as defense counsel has suggested, a key point, or a potentially key point in this lawsuit:

If you know, why was the decision made to give an examination at this time, referring to the examinations in issue only in one specialty, MDT, and beyond that only in

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the generic title. That is, no specialty for management or community programs or auditing or public affairs or anything else? Do you know why that decision was made?

THE COURT: For one thing, may I ask whether you actually participated in making that decision?

THE WITNESS: Let me try to give to the degree that I was involved --

THE COURT: Would you tell me first in what way you were involved.

THE WITNESS: Yes.

When we order examinations we look at provisional lists to see in what titles provisionals are serving.

We saw that there were individuals serving in the title of Human Resources Specialist generic.

We also saw that there were provisionals serving in the specialty of Manpower Development and Training.

Therefore we order examinations for the generic and that specialty. There were either none or virtually no provisionals serving in either Management or Community Programs. Therefore we did notorder examinations in those two specialties. This is standard procedure.

Beyond that point the exact reason as to why there were not further exams given in the other two specialties or not, I can only testify to this extent. I know I was

prepared if the determination was to go and also give examinations in the other two specialties - and I might point out that auditing and public affairs were classified subsequent to the first series of examinations, and it was understood that those two specialties would be handled separately from the other three, which had always been in existence on a separate basis.

And no action has, as yet, been taken as far as I know with respect to the Supervising Auditing or Supervising Public Affairs.

But with respect to these three that we are talking about here, I know there were discussions but I was not primarily involved, because by that point I had left that division to go to Division A, and someone else had better testify with respect to that.

Q By the time you left, however, the decision to give only two tests, the generic and the MDT, had already been made, is that correct?

A Well, at any time the Commission could order the others, and they could be given too.

So the fact that today we order for the positions in which there are provisionals does not mean that tomorrow, if the Commission so wishes, it can't order an examination for another specialty as well if it deems it appropriate.

Q In any event, to your knowledge, the principal reason for this decision was the presumed necessity or desire to replace, or if they pass the test, confirm the provisionals, and since there were provisionals generics and provisional MDT's, tests were given in those areas only?

A The reason why the examinations that were ordered were ordered was based on the provisional list, that is correct.

THE COURT: As a practical matter how did the specialty exam for MHD show up. Was that a special exam altogether?

THE WITNESS: MDT, your Honor.

THE COURT: MDT I mean - or is it part of the two exams we are dealing with here?

THE WITNESS: Based on knowledge, I know that the examinations had a high degree of similarity, but there was some degree of difference. Mrs. Willingham was the actual person who constructed the actual examinations.

THE COURT: Okay.

MR. MINTZ: For the Court's elucidation on that point, I refer to Plaintiff's Exhibit 6, the examination 2013, which is in a combined book with 2012, the open competitive for the MDT specialty, the instructions indicate there is a matter of taking 10 different questions to take

the MDT exam rather than the generic.

THE COURT: Thank you.

BY MR. MINTZ:

Q Did you -- although I know you were not involved in its preparation -- did you, in fact, see the examinations which were prepared as a result of your test plans?

A At what point in time?

Q At any point in time, and, if so, at what point was it?

A Only in connection with this lawsuit.

Q You didn't see them before they were administered?

A No.

Q On the basis of your experience and your observations of those exams, do you feel that they faithfully carried out the intent of your job audit and your test plan?

A Yes.

Q Again, on the basis of your experience, and having actually examined the tests themselves, is it your opinion, if you have such an opinion, that a person who is unable to correctly answer 56 questions, or thereby achieve a score of 70 per cent, would be, in fact, unable to successfully perform the job of Supervising Human Resources Specialist?

A Well, we have to be very careful. No test instrument is perfect. Correlations vary -- let me put it this

way, that in general I believe that a person who would perform satisfactorily in the position should pass this examination and achieve the necessary correct answers to get a passing grade.

An individual on any one day may have a toothache, may be sick, may be worrying about an ill child at home, for any number of reasons a qualified individual might unfortunately fail the examination on that particular day and might breeze through it on another day. But these are things over which we have no control.

Q Are you aware, Mr. Rosenberg, that a substantial number of persons performing in this title as provisionals fail the examinations?

A I read some of the materials, and I believe at the interrogatory you made some reference to that. So in that sense I am aware of it.

Q Does that knowledge give you any reason to question your previous answer that a person who could not pass the examination probably could not successfully perform the job?

A No.

Q If you know, why was the passing score for the written examination set at 70 per cent or 56 correct answers?

A The Commission rules provide that unless otherwise

specified in an examination announcement, the normal passing grade for all city examinations shall be 70 per cent.

In addition, after the results of an examination are known after the test is administered and has been analyzed in terms of tabulating the number of correct and incorrect answers of the individuals, the Commissioner reserves the right, based on a recommendation from the examining division's chief, they may scale examinations so that a lower grade in a raw score is equated to 70 per cent as a test score.

This is a system called scaling, and if in the opinion of the examining division chief and the examiner in charge of the examination, and reviewed by the assistant personnel director, and where scaling is recommended by the deputy personnel director and the personnel director, such scaling is done where it is felt that the examination was unduly difficult, where for some reason we feel that the numbers that would come out of the lists will not be sufficient to meet the needs of the service, and that by such scaling we are not bringing in people who would be incompetent to perform, then such scaling is done.

Whether it was done in connection with this examination, I can't say.

Q You don't know whether it was done?

A No.

Q But it would be within the power of the Commission under the circumstances you have described to permit someone who got less than 56 correct answers --

A To have gotten a passing grade, if that was deemed appropriate in terms of the needs of the department and the nature of the test.

Q You stated that in your observation of the persons in provisional ranks you found few or none in management and community development programs, is that correct?

MS. OMANSKY: I think we better have the question read over. I think it is incorrect.

THE COURT: The question may be incorrect as long as the answer is correct.

MS. OMANSKY: I think the question is misleading.

THE COURT: I take it Mr. Mintz is only expressing what he thought the witness said. He is asking if that is what the witness said. So let's hear what he has to say.

(Question read.)

THE COURT: Is that statement correct?

THE WITNESS: I so believe, yes. The great bulk of the provisionals were serving in the title generic or in the specialty of manpower development and training. The community programs specialty doesn't have development as part of it.

BY MR. MINTZ:

Q Did this fact have any effect on the weight you placed on these two areas in your job audit and test

plan? That is, did you downplay the areas of management and community development because there was no one in those specialty titles?

A May I see the test plan?

No. As a matter of fact, the first three categories all are essential areas for people in community programs. Item 4 and 5 clearly fall within the framework of management as it is used at HRA. I don't think any single area was downplayed in any way.

THE COURT: You don't recall any conscious decision in that regard?

THE WITNESS: Certainly not.

Q Then the essence of this was to develop an examination which was as broad as possible covering the whole range of things a supervising HRS might do?

A That is correct. And the human resources specialist series is a very broad series of titles, to begin with.

Q While you have those in front of you, G1 and G2, I have a couple of clarification questions.

On G2, above the percentages is the word "about," and on G1 that word does not appear. Does that have any significance?

A I don't know. Mr. Fishbein prepared the

May 8th document, and I can't answer why he put in the word "about."

Q The absence of the word "about" doesn't mean your percentages were to be followed more strictly than the percentages on the other?

A I had no such intention when I prepared this. It says relative emphasis, and it is used in a semi-flexible way, as I explained to the judge.

THE COURT: In other words, you didn't feel it was necessary to put the word "about" in there for there to be some degree of flexibility?

THE WITNESS: That is correct.

Q Secondly, both of the test plans indicate this is to be for tests of 100 questions, and yet the actual tests were 80 questions. Do you have any knowledge why that came about?

A No.

Q The problem of giving a training-experience exam for promotion, one that has caused some difficulty, let me see if I can give you an example and perhaps you can explain what the problem is. You have person X, who is by virtue of civil service procedures now, a permanent senior HRS. He has served at that position long enough to be "eligible for promotion."

It is determined for reasons thought valid by the commission that in order to be a supervisor one should have six credits in a particular academic discipline, whatever, social work or something other. It is not necessary to be a senior. One would get a certain number of points on a training-experience exam for those credits. Isn't it then possible that person X would, although technically eligible by years of service and permanent appointment be eligible for promotion, in fact fail a training-experience examination which had additional qualification?

A No. That can't be done for this reason. When an individual enters into civil service the terms and conditions in the examination announcement that they took initially are binding for that individual. Part of every exam announcement are also included the words "and general examining rules and regulations, etc., are considered a part of this examination announcement," although not repeated in their entirety in each and every examination announcement because they are voluminous.

The city has, with certain very rare exceptons, as its rules promotional rights of individuals, and eligibility to take examinations include the statement that I made about six months in grade to be eligible to

file, one year in grade to be promoted.

To interpose subsequently new, higher requirements that did not in fact exist at the time that the person came into whatever individual title it was that they came into at a higher level and say, "Here you stop unless," is not proper, and just isn't done.

They met the requirements that were specified. We must give the opportunity to the person to compete equally with others.

An example of what I mean by "prior" --

THE COURT: I find this interesting, but I am sure we all have a limited time, and I appreciate your desire to give a complete answer. I wonder if this is close to the issue before me. I certainly want the history of how the exam came to be created, but, after all, in the last analysis I have to deal with the exam that was created and I really feel in the limited time we have we ought to move along unless you feel this has a significance I don't understand.

MR. MINTZ: Let me try to explain. I think I wouldn't be giving anything away if I say it is part of plaintiffs' position part of the excessive rigidity, in our opinion, of the civil service requirements results in circumstances that they can't possibly give a job-related

examination because of a certain number of circumstances, not speaking to certain people, etc., and this has had that effect here.

THE COURT: I understand two things. First of all, that their policy has had a certain result, and Mr. Rosenberg isn't disputing that. Whether that affects the outcome of this case is considerably less clear in my mind because it seems to me what I ultimately have to do is judge whether the finished product did or did not have an impact, and if it did, whether it was job-related and properly validated, etc.

I think that some of the things that you theorize about may or may not have been the cause for what ultimately resulted, but again I think it is what ultimately resulted that is the court's concern. The factors you are talking about are more the administrator's concern.

MR. MINTZ: I have no further questions.

THE COURT: Do you have any further questions?

MS. OMANSKY: Yes, I have one or two. Do you want me to take them now?

THE COURT: I don't know if Mr. Rosenberg is coming back after lunch or not. If he will, I would just as soon accommodate him.

AFTERNOON SESSION

2:00 p.m.

MS.LOREN: Helene Willingham will be our next witness.

H E L E N E R. W I L L I N G H A M, called as a witness in behalf of defendants, having been first duly sworn, testified as follows:

THE COURT: Is it Miss or Mrs.?

THE WITNESS: Mrs.

THE COURT: Mrs. Willingham, if you can, will you please keep your voice up.

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MS. LOREN:

Q Mrs. Willingham, what is your present position with the Department of Personnel?

A I am Assistant Chief of an examining division, Examining Division A.

Q How long have you held that position?

A I have held that position since November of this year.

Q What are your responsibilities?

A I am generally assistant to the chief of the

division. I am responsible for exams now being given in that division in the Social Services field, professional social work examinations, examinations at high administrative levels in social work and related titles.

Also I am responsible for reviewing all other exams given in the division, including exams in high administrative levels; reviewing provisionals training exams.

I am generally assistant to the chief of the division, and I am responsible for the operation of the unit in his absence.

THE COURT: This is in Division A?

THE WITNESS: Yes.

THE COURT: Were you in Division S before?

THE WITNESS: Yes.

THE COURT: I take it that is what you will be primarily testifying about, your connection while you were in Division S with these examinations, is that correct?

THE WITNESS: Yes.

BY MS. LOREN:

Q How long have you been associated with the Department of Personnel and in what capacities?

A I have been associated with the Department of Personnel since June of 1959.

I started out as a provisional training consultant in the training division of the Department of Personnel.

I was appointed Assistant Personnel Examiner in the department in November. That is as a result of taking and passing a civil service examination.

I was then assigned to Examining Division S as an Assistant Personnel Examiner.

Q Approximately how many examinations have you prepared since you have been with the Department of Personnel?

A Well, I can't give you the exact figure, but I would say at least 200. At least 200.

Q Do you have any special fields of expertise?

A The special fields that I have worked in almost from the very beginning of my assignment to the Bureau of Examinations were the exams in the Social Services, starting out with when I first joined the division, the entrance level in the Department of Social Services was called Social Investigator, and it then became Social Case Worker.

I prepared exams for all the various levels in the Youth Services Agency, which later became a component of HRA.

The first exams I prepared were exams for

Senior Social Worker, which is comparable to the case worker exam.

Then gradually I took on other exams for administrative jobs, supervisory and administrative positions in the Youth Services Agency, in the Department of Social Services, and Department of Social Services meant supervisor 1, welfare, supervisor 2, going all the way up through the highest competitive positions, particularly assistant director of welfare, which is the highest competitive position in the Department of Social Services and is now a managerial position. It is one of the most responsible positions in the city.

THE COURT: In other words, would it be fair to state that on the whole you have worked on examinations at all levels in the social services field? Is that right?

THE WITNESS: Yes, and including exams which require a master's degree in social work, exams given to professionals who had a great deal of experience, and they were very responsible positions.

THE COURT: I wasn't clear. You came with the Department in 1959. When did you come with Division S?

THE WITNESS: In 1960.

THE COURT: And you were with them until when?

THE WITNESS: Until this past November.

THE COURT: I see.

BY MS. LOREN:

Q Mrs. Willingham, how did you acquire expertise in the field of social services?

A I started to acquire expertise when I started, when I was an apprentice writing parts of exams at the very beginning.

As I progressed and had more responsible assignments I did a great deal of reading in the field.

I was in receipt of all the procedures and all the material that was distributed to all the agencies in which I was involved, and the agencies I wrote exams for.

I did an enormous amount of outside reading.

I had contact with top experts in the field who were at first recommended to me by the peoplein the unit, my supervisor in the unit,and later on people who I became acquainted with and who, in turn, recommended me to others to serve as experts on the examinations.

THE COURT: Did you have any formal education in this kind of work either before you came with the Department or while you were there?

THE WITNESS: I didn't have formal education in this field before I came there, but I did attend the Corfi

School of Social Work for one year in the evening, in 1966 and 1967, under the auspices of the Department and upon recommendation from Mitchell Ginsburg, who later became administrator of HRA and was one of our expert examiners.

THE COURT: He is now the dean of that school, is that correct?

THE WITNESS: Yes.

BY MS. LOREN:

Q Have you ever prepared a job analysis?

A Yes.

Q In what areas? What types of jobs?

A For social service social work and related jobs. For Supervisor 3, Welfare; Supervisor 3, Child Welfare -- that was one I recently did; for top level jobs in the Human Resources Administrations, exams that were held just very recently; for Administrator, Youth Services; Assistant Administrator, Youth Services; Children's Counsellor, any number of them. I could go on.

Q What were your responsibilities concerning the examinations in question here, the open competitive and Promotion Examinations for Supervising Human Resources Specialist?

A I was responsible for developing the questions, the questions for the exams; all nine examinations that were

given.

THE COURT: All how many?

THE WITNESS: All nine examinations that were given in October.

THE COURT: In other words, there were six or seven others besides these two?

THE WITNESS: Oh, yes.

BY MS. LOREN:

Q When were you assigned to prepare these examinations?

A I was assigned either very late in February or early in March. I don't have a record of the date.

THE COURT: 1972?

THE WITNESS: 1972.

Q How much time did you have to prepare these exams?

A Well, theoretically -- I mean, I was given this assignment, I guess, early in March 1972, but I had -- this was in addition to the work load which I already had, which I believe were six other examinations, three of which were multiple choice examinations; two of them were very difficult high level examinations. Others were technical --

THE COURT: You mean difficult to prepare or difficult to pass?

THE WITNESS: Difficult to prepare and meant to be difficult to pass.

I don't mean to say that easier examinations are not difficult to prepare either.

THE COURT: I understand.

Q What documents did you have in your possession when you began to work on the examination?

A Well, first of all, I had received a notice of examination; I had the field audit -- the job analysis, the field audit report which had already been prepared; I had the test plan --

THE COURT: Test what?

THE WITNESS: The test plan. I had all sorts of HRA procedural material and newsletters, and I am on the mailing list for all the material which is distributed to HRA and all the component agencies, supposedly to be read by the supervisor of the HRA staff.

I had various professional journals, government publications that are relevant.

I had a large collection of newspaper clippings which I had already -- I keep a file of relative newspaper clippings.

I had various texts.

I think I had notes -- I probably did have notes which I keep --

THE COURT: You say various tests. What kind of

tests?

THE WITNESS: I said texts.

THE COURT: Oh, texts, pardon me.

What kind of texts are there in this field that can be helpful for something as unusual as this assignment, or, which seems to me, unusual?

THE WITNESS: One text which is very valuable is a book called the Directory of Social Work Agencies in the City, which classifies and gives the functions of the various social work agencies in the city.

THE COURT: In other words, not texts on giving tests but texts that contain material related to the subject?

THE WITNESS: Yes.

THE COURT: Okay, I understand.

Q I want to show you these documents. Can you identify them for me?

A This is a booklet prepared by the Public Affairs Division of HRA which is a description of the reorganization plan for HRA.

THE COURT: Does that have one of our exhibit numbers?

MS. LOREN: I just had it marked. It's Exhibit H.

THE COURT: Tell me again what that is.

THE WITNESS: This is a description for popular distribution prepared by the Public Affairs Division of HRA of a reorganization plan for the Human Resources Administration which was prepared under a private grant by the Economic Development Council of New York City.

This is a reorganization plan of HRA as it was originally organized. This is a further reorganization plan. This is something which is or was in the process of being implemented at the time the examinations were held. The situation now is in a state of flux, but it is relevant to what is being planned for HRA and its component agencies at the present time.

Q Could you identify Exhibit I, please?

A This is an HRA newsletter, which is an internal

news publication which is distributed to HRA -- all the component agencies of HRA. It says "Summer of 1972." I think during the year it is a monthly thing. I am not quitesure how often it comes out, but it is something which contains information which has been decided is important for working -- for personnel of HRA, employees of HRA.

THE COURT: What is the distribution of it, do you know?

THE WITNESS: Because it's distributed to all the component agencies of HRA and central office, I am quite sure everything that would be sent to me is the same package that goes to all the component agencies of HRA and all the heads of units. I am not sure exactly but it's distributed throughout the agency.

THE COURT: Then you say it goes to the agencies. Do you mean just one copy goes to the head of the agency or do they make maybe a hundred copies available for the people?

THE WITNESS: I think more than a hundred copies are made. I don't think copies are made for every individual, but I think people who should have it are on the mailing list. I think hundreds of copies are made. I think anything that would come to me is

distributed widely.

THE COURT: You are not suggesting necessarily that every person who is a provisional supervisor in 1972 would necessarily have personally received a copy of that?

THE WITNESS: He may not have necessarily personally received a copy but it is something it is expected he would be interested in reading.

THE COURT: I am trying to find out how he would get hold of it.

THE WITNESS: If he is not on the mailing list for himself his supervisor or his unit would certainly have been on the mailing list and should have it available.

BY MS. LOREN:

Q Mrs. Willingham, were those documents in your file when you began preparation of the examination?

A This document was. This one I don't believe was. This was in my possession when I prepared the oral part of the examination. I don't believe this was available at the time of the written examination.

THE COURT: That is Exhibit H, right?

THE WITNESS: Yes.

A This document definitely was in my possession.

Q And the other one?

A I don't believe this was.

MS. LOREN: Mrs. Willingham said Exhibit I was in her possession when she began preparation of the examination, but Exhibit H was not.

I move that Exhibit I be introduced in evidence.

MR. MINTZ: No objection as to admissibility.

THE COURT: As a matter of fact, I think Exhibit H, I am not quite clear, you said you didn't have it at the time that you commenced the exam. Does that mean you didn't have it at all with regard to the preparation of the exam and you got it later?

THE WITNESS: I had it in my possession when the oral exam was being prepared.

MR. MINTZ: It may be relevant for the Court's general information, but I think with that stricture we have no objection.

THE COURT: Let's admit both for whatever probative value they have.

(Defendants' Exhibits H and I were received in evidence.)

Q How did you go about preparing the examination?

A As I have already said, I had certain docu-

ments in my possession and certain knowledge about the various functions of the employees who were to be tested at the various levels, about the various job functions that I was testing for. I reviewed the test plan and I decided which areas of the test could most suitably be produced by members of my own staff and myself. I decided which other areas of the test plan would be more suitablefor being written by, originally written by, experts in the field, whereupon I made assignments and prepared to write questions which I did on my own and contacted experts.

THE COURT: What kind of experts? Who were the experts you contacted that actually participated?

THE WITNESS: I can tell you the two experts who did write questions for the exam. One was Professor John Simpson, who was then an associate professor at Rutgers University. He was then at -- I am a little confused, because when he first started to write questions for us he was a professor at Fordham. I believe he was at Rutgers at the time of the examination.

THE COURT: Well, one or the other.

THE WITNESS: At the time he was writing questions for us he was not only teaching at Rutgers and I believe preparing his thesis for the doctorate in social

work, buthe was a consultant for HRA in the policy research division. He was doing a special study for HRA on work and welfare in New York City, and he was actually present in the HRA offices doing this study and did have some chance to observe people in the agency as he was doing the study, interviewing people in the agency.

He has had an enormcus amount of experience in various voluntary social work agencies in New York City and in other cities. He was acting director of the Wiltwick School for Boys, for example. He administered a child care project in the Albert Einstein School of Medicine. He was a consultant in a project in the Bedford-Stuyvesant section in Brooklyn. I could go on and on with his credentials.

The other expert was Dr. Roscoe Brown, who is director of the Institute of African Affairs and professor of education at New York University. He is well known in the city here. He has been particularly involved with working on so-called culture affair examinations. He was a consultant to the Manhattan-Bronx Transit Authority, and he was a consultant on discrimination in the use of tests. He was a consultant to the New York City Human Rights Commission.

He was a member of the -- well, he is, I guess, the committee on Afro-American studies proficiency exam for the New York State Education Department, and he is a member of the Advisory Committee on Urban Education for the Educational Testing Service. He is the author of numerous books.

Q How would you characterize the race of these subject matter specialists?

A They are both black.

Q What was their role in preparing the examinations?

A I asked them to prepare questions particularly in the community organization and community relations section of the examination. I alsodid ask them to contribute any questions on current events they were able to contribute that were relevant.

I think I asked Professor Simpson to contribute some questions on supervision. I made a selection from the questions they contributed and the questions were revived and worked on quite a bit that they contributed.

THE COURT: Have you in the course of preparing your testimony here in light of this lawsuit reviewed the test to determine what percentage of con-

tribution you think that those consultants made to the ultimate examinations?

THE WITNESS: Yes. I know which questions originally came from them.

THE COURT: Do you know offhand the number, just to start? We can get the questions themselves later.

THE WITNESS: I think there were nine or ten of the total. The contribution was larger, but the total number of questions used.

THE COURT: You actually used about nine or ten?

THE WITNESS: Yes.

BY MS. LOREN:

Q Mrs. Willingham, are you familiar with a training course given by HRA to prepare for this exam?

A Yes.

Q Do you have any of the materials used in that course?

A I had in my possession when I prepared the test all the training materials used in the course.

Q Did you use these materials in preparing the examination?

A Yes, I did.

(Defendants' Exhibit J marked for identification.)

MS. LOREN: These are not the entire training materials. Those are in the loose-leaf form. I have copied the substantive ones. If the plaintiff has no objection we will introduce these.

MR. MINTZ: I just received these after lunch. I haven't yet had an opportunity to determine whether the admission of part of this without all of it would be prejudicial.

THE COURT: If you want to put in anything further you may do so. It may all be relevant technically, but it might not prove very much.

(Defendants' Exhibit J was received in evidence.)

Q Did you base any questions in the examination on this training material?

A Yes, I di.

Q Can you tell us how many?

A I think I counted them. I hope I am getting these numbersright. It's either 19 or 20.

Q There has been testimony that this examination was for a generic position. Are there any other kinds of

generic titles in city government besides supervising human resources specialist?

A Yes.

Q Can you give us one or two examples?

A The most obvious example is the attorney title which differs very much depending upon the agency that the attorney is assigned to. The personnel examining series of titles, the occupational group that Mr. Rosenberg and I are in, that is a generic title. There is no generic title quite like this, as all-encompassing as the human resources specialist title.

Q How does the fact that this is a generic title affect preparation of an examination?

A It means that the areas of the test have to be determined to be areas critical, areas that are incumbent to all employees in the various positions under the title. It means that you cannot examine for a specific function, specific knowledges that one person may have and that another person may not have, but that you have to determine what areas and what kinds of subject matter are important areas that should be -- in which each person in the generic title should be competent or should have a certain degree of competence.

THE COURT: I don't know if you know anything

about bar examinations for lawyers, but would you say it might compare to a bar exam for lawyers, which I will state for the record, and I think the lawyers on both sides will agree with me, asks you a little bit about everything that they can think of in the law, or at least reserves the right to, as distinct from an exam, let's say, on patent law or domestic relations law?

THE WITNESS: Roughly, except that it is not anywhere near as exhausting or as specific as that.

THE COURT: I am talking in terms of breadth and scope.

THE WITNESS: Yes.

BY MS. LOREN:

Q Mrs. Willingham, let's turn to the examination itself.

Could you tell us, first of all, the difference between the open competitive examination and the promotional?

A The difference was in ten questions. No. 1 under the test plan, which was called "Functions of Relevant Public and Private Agencies" for the open competitive exam, and for the promotion exam these questions were questions that were more directly about specific employment agencies of HRA.

THE COURT: As Mr. Rosenberg testified.

Q How many questions were those?

A Ten.

Q Which questions were they?

A Questions 71 to 80.

THE COURT: The last ten, is that right?

THE WITNESS: Yes.

Q Can you relate the test questions to the areas to be tested as they are set forth in the test plan and in the job analysis?

A Yes. Shall I go ahead and do that?

Q Yes.

A Questions 1 to 25 related to No. IV and V of the test plan.

Questions 26 through 40 related to No. III, which is current relations and organization.

Questions 41 through 45 were No. VII, which is called here language usage, including -- questions 41 through 50 were the language questions, language, vocabulary and reading comprehension.

Questions 51 through 55 were the arithmetic and interpretations of graphs, tables and charts.

THE COURT: What number is that in the test plan?

THE WITNESS: That is No. VIII.

A Questions 56 through 70 were the questions on current developments and problems in the field of human services, which was No. II.

And questions 71 through 80 were No. I, the functions of relevant agencies or component agencies of HRA.

THE COURT: Or in the case of the other one, the other group of agencies.

THE WITNESS: Yes. I started with the open competitive exam.

Q Can you tell us which of these questions came from the subject matter experts?

A Yes. I can tell you the specific questions.

Q Could you,please?

THE COURT: That is Professor Brown and Professor Simpson?

MS. LOREN: That's right.

A Questions 25, 32, 33, 34, 35, 36, 39 and 40.

Q Which of the questions were prepared by you and your staff?

A Questions 1 through 24.

Q Did anybody else prepare any questions or was it the remainder of the test?

A The remainder of the test.

Q You stated before that some of these, about 20 of these questions, came from the training materials from HRA. Can you tell us which questions came from the training material?

A Yes. 26, 27, 28, 29, 30, 31, 38, 57, 58, 67, 68, 69, 70, 72, 73, 75, 76, 78, 79, 80.

I think I might say there are a number of other questions which I got from other sources, because I had a good deal of the material that was also in the training material, which may have appeared in the training material.

THE COURT: But those that you just mentioned you know did appear.

THE WITNESS: Yes. I know the page number it appeared in the training material.

Q Why did you choose to take some of these questions from the training material in general.

A Because the Training Division of HRA is set up not only to train employees to do a better job but also to prepare -- it is the practice for the Training Division to prepare, to have courses of instruction to prepare employees for promotion examinations. It is expected that the director of the training staff will be familiar with the functions of the jobs that are being examined

for -- to be familiar with job functions because they are doing training of new employees and in-service training courses for employees regularly.

The director of training in HRA was a man who had been associated with the agency for a good many years as far as I know, long before HRA was established, so he was familiar with the development of these titles.

I had my own -- apart from my own ideas about what should go into the exam and the type of materials that should be used for the exam, I felt that his judgment was pretty important, and it seemed to be suitable to work together with him and I found the collection of the materials he used was very good and I referred to the materials he had because they were useful for him and he included some things I didn't have in my possession.

THE COURT: If I understand you correctly you would expect on the basis of what his assignment was that he would be a good source, since he knew what the job content was, what went on in HRA, and so forth, so you looked there and when you found something you felt was useful you used it.

THE WITNESS: I also felt that he was aware, that he had a good idea of the knowledges and skills that

would be required for doing an adequate job.

Q Did you confer with him at all concerning what questions were going to appear on this examination?

A I didn't confer with him in terms of specific questions. He was also partly doing some training for the participants who were to take the civil service exam. He gave them some orientation in taking multiple choice questions, how to answer graph questions, reading questions. In fact, he prepared whole groups of sample questions on varous areas, none of which were used by me, but he did prepare them and he gave them this information.

THE COURT: What was his name?

THE WITNESS: Joel Cohen.

May I add one thing? The promotion candidates and all provisionals in the agency were able to take this training course. It was made available to them.

THE COURT: It was open to everybody?

THE WITNESS: It was open to everybody who was a member of the agency.

THE COURT: Without cost?

THE WITNESS: Yes, without cost.

Q Mrs. Willingham, did anyone at HRA review the

final examination before it was given?

A No.

Q Why not?

A It is not the policy of the Department of Personnel for security reasons to have the exam reviewed by the agency. Certainly not until after it is given.

MS. LOREN: I have no further questions, your Honor.

THE COURT: All right.

CROSS EXAMINATION

BY MR. MINTZ:

Q If I understood you correctly you spent 13 years up until this past fall working in Examination Division S and upon your promotion you were transferred to Examination Division A?

A Yes.

Q Why didn't you stay in the division in which you had the most experience?

THE COURT: If you know.

A It was an administrative -- first of all, it is an administrative promotion, and also the exams in which I have developed expertise have also become a responsibility of this division. It was partly a matter of -- I have similar responsibilities in this division as far as special fields.

THE COURT: I don't suppose you promoted yourself, did you?

THE WITNESS: No.

Q Division S no longer, despite its initial, has responsibility for social service exams?

A All the examinations in the professional social work, the titles in social work, the examinations for the welfare series, a large group of those examinations are going to be given this spring at the highest levels, supervisory 3 welfare and assistant director welfare, those exams I have handled for the past three times they were given, those will be given in the spring, and I will be responsible for those.

THE COURT: Even though you are in Division A, is that what you mean?

THE WITNESS: That function has been transferred.

THE COURT: The exams went with you, is that it?

THE WITNESS: Yes.

BY MR. MINTZ:

Q But the human resources specialist series is not a professional exam in the sense of requiring a particular level of education?

A No.

Q So that is still in Division S?

A At the moment.

Q You indicated you have prepared job analyses for several social service positions. What was your purpose in preparing those job analyses?

A For the purpose of preparing examinations.

Q They had the same purpose as the one done by Mr. Rosenberg in this case -- that is, you or someone else took that test plan and prepared an exam on the basis of it?

A That's right.

Q You didn't do it on the basis of classification or salaries or that type of thing?

A No.

Q In view of your experience do you know why, if there is any particular reason why you did not do the job analysis which was involved here rather than Mr. Rosenberg and Mr. Fishbein, who I believe was partly involved in some of them?

A That is rather difficult to answer. There are two reasons. First of all, Mr. Rosenberg had a great deal of expertise in doing job analyses and also had a great deal of familiarity with HRA functions and

titles. Also, I had an enormous additional work load and it was not possible in terms of my work load to do that part of the work too.

THE COURT: Can you tell me, Mrs. Willingham, is there any normal procedure with regard to whether or not the person preparing the job analysis will also prepare the exam questions that vary from exam to exam?

THE WITNESS: It varies.

THE COURT: Sometimes they do and sometimes they do not, is that it?

THE WITNESS: Yes. But it was expected that if Mrs. Rosenberg had stayed in the division he would have preparedit.

THE COURT: So in this case there was a fortuitous element as well as the other elements?

THE WITNESS: That's right.

THE COURT: In any event, it apparently is not a universal practice for the person preparing the job analysis also to prepare the actual examination, is that right?

THE WITNESS: No. It might be in the case of job analyses that I am working on now I will do part of the job analysis, but because it will be exhaustive I have a number of staff members who are seeing

people I will not be able to see, and it will be brought together and it may be they will have nothing to do with preparing the exam.

Q Prior to the examinations in issue and the other seven which are interrelated with them, what was the nature of the job description, the job audits, that you worked from as compared with the ones involved here? Was there any difference? For instance, the examinations you prepared for social service title two or three years ago, did you have the same type of job audit available to you as was involved in this case, or has there been some change made in the last couple of years?

A The formal job analysis in the form you see it now has been a practice only during the past few years. I can't tell you the exact date when it started. I didn't mean that we didn't do research into the job informally, but it was not produced in a written document in the way it is produced now.

Q So in the past if you did not do the job audit yourself you would have to get the information orally? Or how would it work?

A Well, I would go -- I would get the information orally and take notes which I would have in my possession, and also I would draw upon my experience

and knowledge of the job through my relationshisp with people in the agency through discussing the functions of the job with key people in the agency. But the job analyses I am referring to were formal job analyses which I have prepared during the past three years.

Q Prior to three years ago you did not prepare job analyses either?

A I am saying we did not prepare formal job analyses, which doesn't mean that I did not do a great deal of research about the job, but it just wasn't submitted to the Commission as a formal document the way it is now.

Q You indicated you were assigned to prepare the exam approximately in the early part of March of 1972. We know the exam was administered on October 14th, 1972.

Do you know, in fact, when you completed all your work on it?

A Probably in mid-July. I would say earlier -- the exams go through a process of review, so I was probably finished -- I probably finished my version of it early in September.

Q So we are then talking about that period of approximately early March to early September while you were working on it, while you were also working on other matters which you mentioned in your direct testimony, is that correct?

A Yes.

Q Now,you have already indicated that Defendants' Exhibit H was not available at the time you were writing the exam. That is the reorganization plan.

Defendants' Exhibit I, the newsletter dated in the

summer of 1972, do you have any clear recollection as to whether you, in fact, saw that prior to early September when you finished working on the exam?

A You mean the newsletter?

Q The newsletter, yes.

A I know I used that in preparing the exam. There was a question that was based on --

Q On material in that newsletter?

A Yes.

Q Do you recall which question?

A I think there is something on food stamps. There is a question on food stamps. It is in one of the latter pages in that newsletter.

Q You don't recall the question number?

A The question number?

Q Yes.

A I will see if I can find it for you. Question 58.

Q 58 came from material in the newsletter, Defendants' Exhibit I?

A Yes. There is more coming from the training material, probably was part of the training material.

Q Do you know of your own knowledge, in fact, how widely distributed that newsletter is within the confines of HRA?

A To my knowledge it is distributed to all key personnel and all the component agencies. I don't know --

Q Well HRA has about 30,000 employees?

A Yes.

I don't believe it is distributed to individual employees, but it is made available to employees.

If you will look at it you will see it is something that is meant for general information of all employees. I am on the mailing list of material that is distributed --

THE COURT: You don't purport to be able to tell how many people who took this exam actually were people who did see this brochure?

THE WITNESS: No, I have no idea.

THE COURT: You proceeded on the assumption that it received sufficiently wide distribution that it was reasonable to assume that it had come to the attention of a large number of people, is that right?

THE WITNESS: Yes. It is published for that reason, news items of interest.

THE COURT: We are not arguing about that; I am just trying to understand the limits of your information.

BY MR. MINTZ:

Q Now, in your initial testimony on direct you stated that nine or ten questions were taken from those prepared

by the expert and enumerating what you listed, or what I count to be 8; is that the correct number?

THE WITNESS: I have a record of it here.

Q Now, you also stated, if I heard you correctly, that there is perhaps no position in city government or few as broad in their scope as the ones we are concerned with here, Supervising Human Resources Specialist, is that correct?

A I don't believe there is a position with this greater variety of different functions, widely different functions as the HRA position.

Q Did that factpresent you with special difficulties in preparing the examination for this title?

A I would say it was a difficult examination to prepare but it was certainly possible to decide on certain critical knowledges that shouldbe important, no matter what agency, no matter what function a person had.

Q Did you decide on those knowledges or did you take those as given from the job audit and test plan?

A I had the job audit and test plan which had already been prepared, and I was substantially in agreement with it, with the job audit and test plan.

Q I noticed also in your listing of what portions of the test related to portions of the plan, you omitted

VI, Machine, Equipment and Supply Purchase, Use and Management including safety.

Were there any questions relating to that area on the exam?

A There were. Actually I think what I should have done was group IV and V and VI together. There was a very -- the proportion of questions in that area was small.

Q But they would come within questions 1 to 25, if they are there at all?

A Yes, I think so.

Q Would it have been within your discretion to determine that no questions in area VI need be included?

A I felt that this was not as important.

THE COURT: You are not bound to ask questions in that category?

THE WITNESS: No. I felt that this area -- it would have been better to minimize that area because I felt that it might have been too particular and too many people wouldn't know anything about it.

Q There have been several references to the training course. What, if you know, was the purpose of this particular training course whose materials you used in preparing the exam?

A What was HRA's purpose in giving the exam training

course?

Q That is correct.

A To prepare their employees to do well in the examination.

Q So it was solely, or its main thrust was exam preparation; it was not to prepare them to be better Supervising Human Resources Specialists?

A No, this was specifically for exam preparation.

Q Did you yourself attend any of the training sessions or have any personal familiarity with them on seeing the materials?

A No, but I think there is -- the entire curriculum is included in that manual. I think it is, I did not attend the course.

Q The entire curriculum I notice has a number of sample questions.

A Yes.

Q Do you know where HRA got those questions from?

A The training staff wrote the questions.

Q HRA's own staff wrote those questions?

A Yes.

Q They were not taken from any other tests of the Department of Personnel material to your knowledge?

A I don't know. There may have been some questions

that were derived from questions that were in the public domain, civil service preparatory books, and also other promotion exams have been given where they could have based their questions on some of those. It does not look like they did. If so, a very small proportion were.

Q say it does not look like they based them on --

A If so, in a very vague way. The chart graph questions, they might have been questions that had been used in other civil service tests.

Q Do youknow how many people, in fact, attended those training courses?

A No, I have no knowledge of that.

Q Do you know if they were required in any way?

A No, I don't believe they were required.

Q You believe they were not required?

A I have no knowledge of that except I would not expect it would be required. It is up to the employee to decide whether he wants to prepare for an exam.

Q Was there any other reason that the exam was not submitted to anyone at HRA prior to its administration other than security?

A None that I know of.

Q Now, are you familiar with discussion in the personnel field particularly as it relates to testing regarding the

problems or the facts that have been developed relating to possible discriminatory impact of examinations; that is, differences in performance between blacks and whites, Hispanics and whites and other ethnic groups?

MS. OMANSKY: I object to the question.

THE COURT: Will you read the question back.

(Question read.)

THE COURT: There are various points I would like to make.

First, as far as the form is concerned, it is a poor question.

Secondly, insofar as it goes beyond the direct examination, which is what I think Ms. Omansky objected to --

MS. OMANSKY: No. I am not even sure an expert would be able to handle the scope of that question.

THE COURT: If it is just as to form you're sustained.

MS. OMANSKY: Besides, I think it ought to be more specifically directed, more specifically phrased.

MR. MINTZ: I will rephrase my question.

THE COURT: All right, Mr. Mintz is crying uncle.

BY MR. MINTZ:

Q Have you in your personal experience in connection

with your job become aware of any discussion relating to differences in the performance of ethnic groups on written employment examinations?

A Yes, of course.

Q Where did you find such information, if you recall?

THE COURT: Your question was, were you aware of discussions, and I am not quite sure what you mean by that.

MR. MINTZ: I was trying to give it in the broadest terms possible, whether it was something she read in a professional journal, whether it was something she heard discussed in the office, et cetera, and she said she was generally aware, and now I am trying to find out where it came from.

A First of all, there was considerable publicity in the press which I would obviously be interested in because I am in the business of preparing tests, the problem of administering tests in the fire and police services in the various cities.

THE COURT: Have you been involved in any prior litigation in this field, as a witness or otherwise?

THE WITNESS: Have I --

THE COURT: Have you been a witness or been involved

in any way in any of the earlier cases on the subject of discriminatory tests?

THE WITNESS: Discriminatory tests? No.

BY MR. MINTZ:

Q In your preparation of the examination were there any steps which you took in an effort to deal with this problem to perhaps minimize any discriminatory impact your exam migh have?

A This was a very difficult problem. I am elaborating on what I said previously. This was a very difficult problem because in this case we were examining for positions at a level where a certain degree of proficiency and knowledge, professional knowledge and background knowledge was required, so that we were within those limitations. Because no particular educational requirement was -- because there was no particular educational requirement, we made a very strong attempt not to have the questions depend on particular professional training, and not to use professional jargon; to frame the questions in terms of -- well, when we were asking about a concept we explained what it was we were asking for, so that we were able to test the person's judgment about an idea that we felt was significant, or about a subject we felt was significant in terms of what we were examining for.

We tried not to use complicated sentence structure or anything that would -- well, we would do that normally anyway -- the reading and chart and graph interpretation questions, I think I can say this, because there is some research, although I don't know how conclusive it is, that educationally disadvantaged people would do poorly on reading and graph interpretation questions, and yet it was decided that this was an essential part of the job, and that a certain level of reading ability was required and a certain ability to do the simple kind of chart interpretation and the simple kind of arithmetic that appeared on the test was needed, and those questions were geared at a very easy level.

It was after a good deal of discussion decided not to eliminate it from the test.

THE COURT: Am I to understand from what you said, Mrs. Willingham, that you were conscious of the subject, if you want to call it that, or the problem, or whatever it is, of possible impact, racial impact of the test while it was being framed?

THE WITNESS: Oh, yes.

THE COURT: And you have mentioned these things as steps that you recall that you took to eliminate or minimize that possibility?

THE WITNESS: Yes, at the same time I --

THE COURT: You are not just now looking back and saying I did it?

THE WITNESS: Oh, no.

THE COURT: You actually intended to do it at the time?

THE WITNESS: But we also had to gear the content toward the level of the job. The content of the test was also an extremely important factor in terms of being a valid test for the job, for the title.

BY MR. MINTZ:

Q Is there any way to characterize the reading level that is required for one to successfully perform the job of a Supervising HRS? Can you characterize it in any final form, such as 11th grade average or third year college, or anything of that nature?

A I can't do that because, first of all, individuals vary, and you really have to think in terms of what was required in order to do the job. The reading material chosen was the kind of reading material we expected the employee would be able to read.

THE COURT: In other words, you were not interested in the fact that somebody can read Tolstoi, but what you are interested in is if they can read something in this field and

understand it?

THE WITNESS: Yes, something that they may have to read on the job, something in this field.

BY MR. MINTZ:

Q Do you recall being present at a deposition in this matter on December 18th when I examined you about this case?

A Yes.

Q I asked you essentially the same question about what steps were taken to deal with any problems of ethnic or racial bias, and I refer to page 35 of the deposition.

Your answer was -- and I quote:

"One important thing. We made a strong effort to use language that was to eliminate professional type of jargon, to use language -- not to use academic type language that might not be understood by minority candidates; to phrase questions in practical terms rather than in theoretical terms, generally avoid the academic type approach to the question."

Is that still your answer to this question?

A Yes, with the elaboration as given.

Q Do you have a copy of the test before you?

A Yes.

THE COURT: I am interested to hear the question, but I think this would be a good time to take an afternoon

recess.

(Recess.)

THE COURT: I have a pretrial conference in a case which involves a fairly large number of people at 4:30.

I do not want to curtail anything, but I will have to stop at that time.

BY MR. MINTZ:

Q Now in connection with my previous question about the questions on the exam being specific, which you said was one way which you used to deal with possible problems of ethnic or racial bias, I refer you to the first 25 questions in the examination.

Do you have a copy in front of you?

A Yes.

Q Is there anythingin any of those questions which relates to Human Resources Administration any more than it relates to any other organization in which there are management, supervisory functions?

A I would say that each one of these questions are questions that would relate to supervising in the Human Resources Administration.

pm

Q They could also relate to a supervisor in the Corporation Counsel's office, in the Department of Personnel, as yourself, a captain in the Police Department, a battalion chief in the Fire Department, virtually any other supervisory position, couldn't they?

A Not necessarily. There may be some -- I would choose a question that I know would relate to a supervisor in the Human Resources Administration, which doesn't mean -- there are certain principles, certain concepts. I am not saying I examined in terms of writing in terms of concept, but there are certain ideas and principles that would hold true no matter where the supervisor was functioning.

Q Where did these questions come from? You said, focusing again on these questions, 25 was prepared by one of the experts; 1 to 24 were prepared by you or your staff. Were they created as an original thing for this examination? Were they taken from other examinations, either in the Department of Personnel files or elsewhere? Were they modified? How did they develop?

A They were original questions created for this exam.

Q Each and every one of them was solely created

for this exam and they originated nowhere else?

A That is correct.

Q You also voiced a desire to avoid the use of jargon. I refer you to question 14, which asks about the halo effect and how it might harm supervisor-subordinate relationships. Would that be a question which uses jargon, in your opinion? Is halo effect a professional jargon of some sort?

A I wouldn't say it is jargon. It is a psychological principle that I would expect the supervisor at this level to understand. It is something, an elementary idea, that appears not only in practically every elementary supervisory text, any psychological text. It is not a difficult idea.

THE COURT: Without minimizing what you just said, I didn't know the phrase myself before, which doesn't prove anything because I am not in your field, and I had not heard it until yesterday. What does it mean, having an attitude towards somebody as if they were sintly or what?

THE WITNESS: It means basing your judgment of an individual -- an individual example of a person's work on your overall judgment of the person's functioning, so that if he did a bad job in some area because you

have a general picture of his being a good employee you would ignore this, the supervisor wouldn't be aware that this is something he did poorly. We considered it an important idea for a person in a supervisory capacity to understand.

Q Wouldn't it have been possible to spell out a function saying the possibility of one's misjudging individual incidents because of a general viewpoint about an employee would have this-and-this effect rather than using the term?

MS. OMANSKY: I object to the question.

THE COURT: I think the question answers itself. It would be possible to do so, there is no doubt about it.

THE WITNESS: You would make a different question of it.

Q Were there any challenges to any of the proposed key answers to this examination?

A There were very few, something like, I believe, 11. My memory is not exactly accurate on this, but I think thereware less than 15 candidates submitted protests to the examination. There were very few. This is the normal administrative procedure, that candidates are given three weeks within which to submit

protests. The protests are carefully considered and very often if we feel there is validity,we are not perfect, we can make mistakes, and this is why the candidates do have this opportunity to submit protests. There were very few protests.

THE COURT: How many people took the combined exam, do you know?

THE WITNESS: Over 1100 people.

THE COURT: And 15 out of that total, as far as you recall --

THE WITNESS: I believe so. I can give you the exact numbers.

THE COURT: You are sure that is a fair approximation?

THE WITNESS: A very small number of protests were received.

BY MR. MINTZ:

Q Just to be certain, it occurred to me I asked a question based on my own knowledge and it might not be clear. There is a recognized procedure whereby sometimes following examination proposed answers are published and persons who took the examination have the right to submit challenges to any of those proposed answers and their reasons for such challenges, what they think should

be the correct answer, and those are considered by the Department of Personnel?

A That's right.

THE COURT: Is that the way it happened here?

THE WITNESS: Yes.

Q Were any changes made in the final key in view of the protests?

A No, the protests were very insubstantial.

THE COURT: I don't think you necessarily base your decision on the actual number of protests, do you?

THE WITNESS: The content. One protest would be enough for us to allow another answer if we thought it was valid. Not only that, there is a protest that goes on before the final key is published, we do an item analysis, and if on that basis we feel we have inadvertently given two answers that are very close and that could possibly be validly considered correct answers we will allow two answers. I believe we did that.

MR. MINTZ: May I have this marked as the next plaintiffs' exhibit.

(Plaintiffs' Exhibit 70 was marked for identi-

fication.)

THE WITNESS: You can see in question 78 we allowed two answers, and that was on the basis of the item analysis before the protests were submitted.

Q That was 78 on the open competitive, 2013?

A Yes. I don't seem to have a copy. It was question 78 on the open competitive. I don't have a copy of the key answers.

Q I show you what's been marked Plaintiffs' Exhibit 70 for identification. Are you familiar with that?

A Yes.

Q What is that?

A The item analysis we used before publishing the key answers.

Q Were you involved in the preparation of that?

A Yes.

Q Can you tell us how it came about?

A This is a normal practice after every exam is given.

THE COURT: I have already tried one of these cases, and I think probably something about this ought to be in the record, but I am generally aware of how it works.

Q Let me summarize it in the hopes of expediting

it and you can tell me if I am correct.

This only relates, first of all, to 2013, the open competitive. To my knowledge, at least, I haven't seen any item analysis for 1631, but they are virtually identical.

As I understand it, a random sample of 300 of the papers is selected, they are then graded on the basis of the proposed key and the top 100 and the bottom 100 are subjected to an item analysis. The middle hundred are dropped out. So you then get a list of how many people in the top 100 put answer A on question 1 and answer B, C, D, etc., and so on down through the 80 questions.

Is that the procedure?

A That's right.

Q As an example, in connection with this question 14 we have been talking about I notice that 50 of the top 100 put answer A, which is the key answer, 40 people put answer C, and the others were scattered around in B and D; and of the bottom 100 the majority, less than the majority, put answer A, the proposed key.

Would that give you any reason to either allow an additional answer or strike the question?

A It would give us reason to see that this was

a comparably difficult question for the candidates on the test. It showed us that the candidates who generally did poorly on the testcouldn't answer this question. It would make us inspect item C to see if there was any validity for taking this answer. But then we would proceed to make a determination as to whether answer C had any validity, and since it was decided that this answer was not a correct answer, that there was no validity, we might have some idea about why people took this answer, and in this case it was because they didn't understand. They were wrong. This wouldn't mean that we would allow answer C. We wouldn't allow a wrong answer just because a great many candidates took it. We might do so if we found there was some validity.

Q Isn't it also possible in a situation like this, where only half of the top third of the test takers got the right answer, that you might strike this question?

A It would mean this is a discriminating question, that this is a difficult question, and there have to be questions at various levels of difficulty.

THE COURT: When you use the word "discriminating" in that sense you mean it requires --

THE WITNESS: That is unfortunate, but that is the word used in our jargon.

everyone did that on the average statistically 25 per cent would get each of the answers, is that the way it would work?

THE COURT: I don't know that Mrs. Willingham purports to be an expert in probability. I will take judicial notice of the rough concept.

A Whether or not that is true, we still wouldn't strike out an answer, just strike out a question because that happened. Because even though it were possible that everybody guessed, we certainly have no way of determining that.

THE COURT: Isn't the response, the pattern of the response, to No. 15 close to the line which you might strike an answer? Suppose there were only five people who got it right, for example. Would the sheer lack of numbers make you feel that you should strike the answer?

THE WITNESS: We would strike out a question only if we felt it wasn't a valid question, if we didn't have any correct answer or any acceptable answer. We would do that.

THE COURT: Regardless of how many people got it right?

THE WITNESS: That's right. It would be

THE COURT: It is a term of art, and has nothing to do with the racial question?

THE WITNESS: Yes. I have to use that word because we use it. It distinguishes the candidates who do well on the test.

Q As another example, question 15 of the top third, the sample of the top third, 35 picked A, the proposed key, 35 picked D, 17 B and 13 C.

There you have only roughly a third who picked what the department considered the right answer. Was there any thought of striking this question from the examination or allowing an additional answer?

A No, because in the same way, after reviewing the other three key answers it was determined that A was the only correct -- was the only acceptable answer. Of all the answers this was the only answer that was an acceptably correct answer to the question.

Q If people arrived at their answers by pure guess work, wouldn't it statistically be true 25 per cent would pick A when you have four answers?

A I don't follow you.

Q You have four possibilities. If I had no idea what the answer was and knew that I wouldn't be penalized for a wrong answer I would guess. And if

decided that that was a difficult question, or that it was difficult for the people who took the test.

Q The fact that it was extremely difficult and only a small percentage answered it correctly would not of itself be enough for you to strike that question from the exam?

A No.

Q Focusing on that question again for a moment, it begins:

"It is generally considered that the best interview is the one in which the interviewer talks less than the person interviewed."

When you say something like "It is generally considered," where does that come from? Whose general consideration is this that you are reciting?

A I hate to use this word "experts," but the body of knowledge about interviewing techniques, in which there are certainly a number of well-known authorities who have written texts about interviewing, and it is not only that but it is --

Q Is this something that comes out of textbooks for the most part?

A Well, every supervisor does have to learn how to interview. He may not learn this from a textbook.

THE COURT: I think what Mr. Mintz is asking you is whether you believe the proposition you have stated here comes largely from the textbooks.

THE WITNESS: I think you would find this idea in a textbook, but I wouldn't say the idea necessarily comes from a textbook. Anyone who has experience with interviewing, anyone who was a competent interviewer, would know if the person doing the interview does all the talking he is not conducting much of an interview. The purpose of an interview is to get the other person to talk.

THE COURT: Just like a competent cross examiner, for example?

THE WITNESS: That's right. You wouldn't say it is an absolute rule, because it is not an absolute rule. There may be cases it is better for the interviewer to do the talking but that wouldn't generally be so.

Q Similarly in question 16 it begins as follows:

"Studies of groups of workers doing the same job under the same conditions have shown that there are always a few workers who have more accidents than the rest."

Where does one find these studies which purport to show this proposition?

THE COURT: What is the relevance of that, Mr. Mintz?

MR. MINTZ: My point in this particular phase of the question is to show that these are textbook questions. They are in fact not practical at all. They are things which people who are students of the field, academicians, would know well but need not necessarily be known by the people who are capable of doing the job.

THE COURT: I don't construe this question to require the person taking the exam to agree with a proposition stated but merely to hypothecate the statement. Because of the intangible nature of the subject matter with which we are dealing here I am willing to permit youto explore the area, but it is only fair to give you my point of view toward what we are dealing with.

A It is not demanded that the person taking the test knows about these studies.

THE COURT: Or accepts the proposition.

THE WITNESS: No. We are telling him this is what the studies say.

THE COURT: And you don't say all studies show it either.

THE WITNESS: No.

Q You are aware, I believe, that eligibility for this examination required no more, indeed, I think it required less, than a high school diploma or high school equivalency, is that correct?

A The person did not necessarily have to have any educational accreditation.

Q But his entire experience could be of a practical nature and very little in school?

A That's right.

Q Given what could therefore be a widely varying difference in academic experience between the candidates, did this present special problems to you in constructing an examination?

A It made it more difficult, but, on the other hand, we were looking for a certain degree of competence that the person had developed whether or not he had formal educational -- whether or not he had a formal educational background. It meant that we couldn't refer to certain terms, certain ideas, that he would only have learned in school without explaining them. We tried very hard not to do that. We still demanded, when we chose a question, it was a question that we felt the person should have learned about or been able to understand at

this point in his development if he was going to be able to do this kind of job.

Q Incidentally, your own background, as I recall includes a bachelor's degree in English and a year of study at the Columbia School of Social Work. That is your academic background, is that correct?

A Just about.

Q And prior to your employment with the City of New York in 1959 your work experience was largely in writing, is that alco correct?

A In editorial work, in publishing, as a professional writer.

Q Heavily involving the use of language, in any event?

A Yes.

Q Do you claim to be a psychomatrician?

THE COURT: If you do, will you tell me what it is.

Do you pretend to have that expertise?

THE WITNESS: I am not a psychomatrician.

Q Have you any formal training in the field of test construction?

A My training in the field of test construction has been mainly only job and through my own reading and

study. I have some knowledge of statistics, the amount of knowledge I need in order to do the job.

THE COURT: What kind of formal training is available in test construction these days? Are there courses given?

THE WITNESS: There are formal courses of study in the field of psychology.

MR. MINTZ: I would like to move the admission of Plaintiffs' Exhibit 70.

MS. OMANSKY: No objection.

(Plaintiffs' Exhibit 70 was received in evidence.)

Q The two examinations here were among a total of nine that you were preparing at the same time for the HRS series, is that correct?

A Yes.

Q For the record, again to save time, they were promotional and open competitive, HRS, and open competitive promotional HRS (MTD), the same three at the senior rank and the same three at the supervisory rank, is that correct?

A Yes.

Q Were there questions common to all nine of these examinations?

THE COURT: You mean were there any questions on all nine of the examinations?

Q Yes.

A No, there were no questions common to all nine.

Q What were the maximum the questions may have had commonality?

THE COURT: If you know.

A Forty.

Q Forty questions appeared on how many exams?

A No, I think the best way to explain it is on the supervisory exam the first 40 questions appeared on both the senior and the supervisory exam. The last 40 questions appeared only on the supervisory exam. Then on the senior exam the first40 questions would have appeared both on the senior exam and the first level exam. This is the way they are divided. Each test had a group of 40 questions which were progressively more difficult.

Q There is a code at the bottom of each page.

A I think that is self-explanatory.

Q As I understand that again, hoping to speed things up, because it may be useful at some point, taking the first page of questions, page 3, we have the initials

C-P-M-SR-SUP. That would mean competitive-promotional-MDT SR, supervisory?

A Yes.

Q That would follow for the first 40 questions. And then up to question 70 we find commonality among three exams, competitive-promotional-MDT supervisory HRS. And the last 10 are unique to this exam, to each exam.

A Yes.

Q In preparing these I presume that you had job audits for all -- well, for six different positions, the three levels of HRS generic, and the three levels of HRS (MDT), is that correct?

A Yes.

Q Was there any difficulty presented by inter-relating these six job descriptions and producing nine different examinations as far as keeping the levels straight?

A The problem here was to produce groups of questions at different levels of difficulty. It was decided that these portions of the exam were fields to be examined in common for all nine titles. So it was really three levels that we had to deal with. One group of questions which was the easiest, one which was the middle range of difficulty and one group which was most

difficult.

Q You indicated eight questions on the examination were among those taken from Professors Simpson and Brown.

A I think there were nine. I would have to count them.

Q Well, eight or nine. They were prepared by Professors Simpson and Brown. Were they revised in any way by you or your subordinates?

A Yes, they were.

Q In what manner were they revised?

A Various. I have copies of the various revisions, but I think for the most part they were revised for the purpose of making them less academic in nature, but they were revised together with the person who wrote the questions, particularly with Professor Simpson.

Q Do you recall -- and I hand you the item analysis, Plaintiffs' Exhibit 70,to possibly refresh your recollection -- whether the eight questions you have listed -- I don't know what the ninth one was -- was the performance of the test-takers easier than the test as a whole?

A I would have to take it question by question.

Q You didn't specifically check for that at any time previous to this, how the performance on the so-called experts' questions compared with the test in general?

A I think I would have to go over it now. I did look at the item analysis. As I remember, I didn't notice any --

THE COURT: I would rather not take the time while the witness is on the stand.

MR. MINTZ: It is in evidence and can be referred to at the appropriate time.

Q The training program, as I understand it, only present employees of HRA, either senior HRS or provisional sup-HRS, were eligible to take, is that correct?

A Yes.

Q So people outside the agency or outside of those two titles would not be eligible for this particular training program?

A No.

Q Are you aware of the fact that the percentage of those passing was higher on the open competitive examination than on the promotional examination which was taken by, among others, those eligible for the training program?

A Yes.

Q You know that it was higher on the open competitive test?

A I believe so.

Q You stated that your version of the examination was completed in early September and was then subsequently reviewed. Were there any changes made by your superiors of substance?

A I am sure there were.

THE COURT: What was that?

MR. MINTZ: In substance.

THE COURT: Changes in what?

MR. MINTZ: Eliminating questions, major revisions, anything of a major nature.

Q Was your test substantially accepted and the one given in October?

A There may have been one or two questions that were -- it is our practice to submit more questions than the questions that are finally used. It may have been some questions were taken out and other questions were substituted. Not many, as I recall.

Q To the best of your recollection, you probably submitted more than 80 questions for each exam in September, and some --

A I had more than 80 questions in my supply of questions. So if it was decided -- and this is usually a joint thing, where I will agree with the person who is reviewing it after some discussion with that person -- if that question is not to be used there will be another one substituted instead. Then there would be revisions in terms of content of it, in terms of language.

Q Are you familiar with the term as it is used in the profession relating to employment examinations, validation?

A Yes.

Q Was anything in the nature of validation study performed on either of the examinations in issue?

A You mean the way the tests were given?

Q Yes.

A No.

Q Has any validation been undertaken as of this date?

A Our practice is to use only the item analysis.

THE COURT: Does that mean that that is, therefore, the only validation that has been done?

THE WITNESS: Yes. That is the practice, for obvious reasons. Our tests are given to the candidates after they are -- the candidates have the tests

with them, they are public property, and weare not able to use the questions again. Therefore, a validation study would be rather wasteful.

Q Finally, on this matter of the security considerations which made it apparently difficult to have any HRA people review the exam before it was given, was any consideration given to perhaps scheduling a conference at the Department of Personnel where someone from HRA could review the exam there, not take it out, and be trusted, one would hope, as you were, not to reveal it to anyone else but to get their input?

A This is not Department of Personnel policy.

Q It simply is not done that way?

A No. There are some exceptions, however.

Q Other than the fact it was not a matter of policy, would it have been possible to do that?

MR. OMANSKY: I will object to that question.

THE COURT: Sustained.

MR. MINTZ: I have nothing further.

THE COURT: I am not sure whether the question I am going to ask is relevant or not, but I am going to ask it since I am in charge. Were you surprised at the results of the test?

THE WITNESS: In terms of --

THE COURT: Of the numbers who passed and failed and the racial composition, and so forth. Are you surprised that we are here after all the efforts that you put into avoiding this kind of thing?

THE WITNESS: I can't say that I am surprised that we are -- I was surprised that the test proved to be as difficult as it did to the promotion candidates. I think we generally believed that it was a very easy test.

THE COURT: In other words, you were also surprised it was difficult for nonminority people taking the test, is that right?

THE WITNESS: Yes, I was.

THE COURT: The other thing I wanted to ask you was this. Within your profession, is there any such concept as -- I don't know what you call it, but giving the examination, let's say, to people in your office, or something like that, to see how they do on it?

THE WITNESS: Yes, there is a practice of doing that for tests of general knowledge where other employees in the office would be suitable, would be competent candidates, but it wouldn't apply to this because it is a test of special knowledge. Clerical tests and other tests this is done.

THE COURT: Ms. Loren, do you have any questonis?

MS. LOREN: Just one, your Honor.

REDIRECT EXAMINATION

BY MS. LOREN:

Q Mrs. Willingham, Mr. Mintz asked you whether any types of validation studies were done before the examination was given, and you said no to that question. What types of validation studies did you have in mind when you said "no"?

A I am talking about statistical studies such as criterion, concurrent validity studies and related studies. It is the type of studies that we could not do partly because they are not feasible and also because the questions are not used again and also because in the case of this test this is the first time the test has been given. They could be done some time in the future, but there wouldn't have been time to find out how these people would do on the job.

MS. LOREN: That is all.

RECROSS EXAMINATION

BY MR. MINTZ:

Q In view of the surprising difficulty of the examination which you expressed in response to the court's

question, was any consideration given to scaling the examination in a manner that Mr. Rosenberg discussed this morning, that is, permitting people who got something less than 56 questions correctly answered to a achieve a score of 70 per cent?

A I think I didn't emphasize clearly what I meant. I was surprised the test was so difficult for the promotion candidates. A large enough number of candidates on the whole passed the test so that there was a sufficient number of people eligible to fill the jobs. I had no knowledge of whether the open competitive candidates were provisionals or not. I didn't know about that until this suit was brought, as you know, except from hearsay.

Q Regardless of --

A This is not a conventional promotion, incidentally, because a great many people taking the tests were actually employees of the department and had experience similar to the provisionals. There was no reason for scaling this because we had certainly a large enough body of people to fill the openings.

Q In other words, simply because there were enough passers between the two tests to fill the jobs there was no consideration given to scaling?

A No.

Q It was not, in other words, thought that some qualified people may have been screened out by absolutely requiring a numerical 70 per cent passing?

MS. OHANSKY: I object to that question.

THE COURT: I don't know if it is objectionable, but my understanding is that it isn't normal to scale an exam unless the department is faced with a dearth of candidates.

THE WITNESS: We had certainly a larger number of candidates taking the tests than there were jobs and a larger number of candidates passed.

Q Is that correct, that the department policy would be only to scale when it is necessary to get additional successful candidates to fill the jobs?

A Yes.

Q It wouldn't be done simply because an exam was thought to be too difficult, even though there were enough successful candidates?

A What I said originally was I was surprised it was so difficult to the promotional candidates, which was a small proportion of the candidates who took the test.

THE COURT: Thank you very much, Mrs.

Willingham.

(Witness excused.)

MS. OMANSKY: Your Honor, I don't know whether you want to start --

THE COURT: I would like to start if there is any reason to believe you are not going to be finished tomorrow if we don't use the next 20 minutes. If you don't think there will be difficulty finishing it, being a nasty day and being difficult to get around, we can conclude now.

MS. OMANSKY: I am confident we will be able to finish tomorrow.

THE COURT: Then we will adjourn now, ladies and gentlemen, and start again 10 o'clock tomorrow morning.

(Adjourned to January 10, 1974, at 10:00 a.m.)

JAMES C.JONES, et al. etc.

vs.

THE NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, et al., etc.

New York, N. Y.,
January 10, 1974; 10:00 a.m.

Trial resumed.

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MS. OMANSKY: The defendants call Harold Yourman.

H A R O L D Y O U R M A N, called as a witness by defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. OMANSKY:

Q Mr. Yourman, what is your current position?

A My current position is director of labor relations quasi-public.

Q Where?

A Human Resources Administration of the City of New York.

Q Briefly, would you tell us what quasi-public is?

A I am responsible for the labor relations for the areas which the Human Resources Administration funds. In the Community Development Agency this would be the Community Corporations and Delegate Agencies. In the Manpower and Career Development Agency the contractual agreements between the city and RCA and Rentar, and being involved in their labor relations between those independent companies and the unions thas represent their employees.

THE COURT: Without making you take a long time, am I to understand that you mean that you are in charge of the labor relations of persons who are employed by outfits funded by HRA but they are not city employees directly?

THE WITNESS: Yes.

A Also, I am responsible for the social service aspect in the Human Resources Administration.

THE COURT: That part I don't quite understand. What do you mean by social service aspect?

THE WITNESS: With the reorganization of HRA combining the old HRA with the Department of Social Services a number of years ago, the responsibility of social services and clerical, administrative, ro ancillary groups has been separated, so I am responsible for the social service group, which includes the human re-

sources occupation group.

THE COURT: Does that mean as far as social services you are responsible for the city employees?

THE WITNESS: Yes.

BY MS. ONANSKY:

Q What is your educational background?

A I have a bachelor's degree from New York University in personnel and industrial relations. I am co-adjunct instructor for public sector labor relations at Rutgers University, and Essex County Community College, and at Cornell University, School of Industrial Relations.

THE COURT: Did you go through that whole curriculum at the ILR?

THE WITNESS: No, I have my degree from NYU.

THE COURT: You teach?

THE WITNESS: Yes.

Q When did you begin work for Human Resources Administration?

A August 14, 1967.

Q Would you outline briefly your prior history?

A My prior employment after graduating college, one year from the electronics industry as a personnel

manager. From 1961 I was employed by District Council 37, American Federation of State, County and Municipal Employees as an associate research director involved in the classification, collective bargaining negotiations, research for the union dealing with the City of New York.

THE COURT: When did you say that was?

THE WITNESS: 1961 through 1966.

THE COURT: In the days of Mr. Worth?

THE WITNESS: Yes. I left in 1966 and went to Montefiore Hospital as wage and salary administrator, and one year later started with the City of New York in my present capacity in HRA.

BY MS. OHANSKY:

Q In 1967, when you first came to the Human Resources Administration, could you describe the structure of the agency?

A HRA just got started. Prior to HRA it was called the Economic Opportunity Committee, and it was put together very quickly. The executive order which established HRA established basically three new city departments. HRA as a superagency, MCDA for Manpower Career Development Agency, and CDA, Community Development Agency. Part of CDA being the Council Against

Poverty, which is a planning organization, they do planning and allocation of funds into the poverty program, designated poverty programs. It is the community agency designated under the OEO Act.

THE COURT: What is its actual name?

THE WITNESS: Council Against Poverty.

A HRA being a superagency was set up as the administrative arm for the human services area in the City of New York. Other superagencies were being established, the Environmental Protection Agency, the Health Services Administration, Environmental Municipal Services, the Economic Development Agency. All these agencies were taking existing departments under one umbrella to reduce the number of administrative departments reporting to the city's administrative department, being budget, personnel, finance, Controller's office and to the Mayor, so that the Mayor would have only 11 people reporting to him directly as administrators, and commissioners reporting, the commissioners under those subdivisions would report to any one of the administrators of the superagencies.

DSS and YSA came under HRA, but --

THE COURT: DSS?

THE WITNESS: Department of Social Services,

the old Department of Social Welfare.

Both of these departments were codified by law and there were state restrictions on them since they receive funds from the state and there was active control by the state in their operation.

The law, the social service law, mandated that the commissioner of social services receive the funds and not HRA. Not until Mr. Sugarman became administrator, he also assumed the role of commissioner of DSS, was there movement for the total superagency structure with DSS included, and since that time all of the administrative functions have been commingled, so that HRA is now truly a superagency.

THE COURT: As it is about to be broken up.

THE WITNESS: That is another question. But it is now a superagency and there is a commingling of all administrative functions. There is one central Personnel Department, fiscal is centralized, planning, programing, purchasing, all centralized.

BY MS. OMANSKY:

Q What do the various agencies do within this superagency? In other words, there was a centralization of the administrative functions?

A Right, CDA, Community Development Agency,

responsible for community action programs, and it is actually an arm of the Council Against Poverty, the implementing arm, Council Against Poverty being made up of 51 people, one representing each of the 25, 26 community corporations, representatives from the private sector, from labor, from government. They determine the poverty areas, they develop by demographic studies the incidence of poverty and therefore determine what percentage of money, of the total area allocation, combination of both federal and city money, should go into each one of these areas.

Q I wasn't looking for a total description. I just wanted a statement of distinction between administrative functions and what would be --

A Naturally, then, the other arms of the agency become programatic in nature. They implement the programs developed at HRA and are responsible for the implementation and running of the programs in their specific area.

THE COURT: Like what?

THE WITNESS: Like the manpower program, the community action, the children.

With the new structure, the new reorganization, income maintenance, community services. Each one

would be responsible for their frame of reference, such as specialty services for adults.

THE COURT: Is that what you have in mind?

MS. OHANSKY: Yes, generally. Just briefly.

THE COURT: All right.

BY MS. OHANSKY:

Q When you first came to work were you employed by the HRA when human resources specialist occupational series was established?

A No, the occupational series was established effective July 1, 1967. I came on board August 14th. I got involved somewhat in the classification of the titles in the HRA series through a collective bargaining request. Prior to July --

THE COURT: When did you say the occupational series was established?

THE WITNESS: July, 1967.

Q Would you describe what classification entailed?

A Classification would be the study of jobs, of many jobs, evaluating them, and assigning them to a class specification, a single title. Also, by evaluating the job, determining at what salary level that job should be paid.

We had in the HRS series originally six jobs created. HRA, HR technician and senior HR technician paraprofessional level as entry and at the professional level, the HRS trainee, senior HRS and sup-HRS. The original title was not created in the original Civil Service Commission resolution.

The original people were employed in what we call job office titles where the position they held determined what the title would be, so that we have program developers, psychometricians, testers, personnel assistants, purchasing office assistants, where it was more descriptive of the job. When the classification -- when the titles were classified, they were classified into the HRS occupational group, the HRS job description is called a class spedification, and in that class specification an employee could be performing one phrase of that job description or one sentence and not necessarily, in most cases not doing the whole job. It explains a varied spectrum of jobs within that one title.

Q Mr. Yourman, you said you were not at the agency when the occupational series was established. Were you ever involved with these titles in the occupational series, and if so, when?

A Yes, there was a bargaining certificate filed by SSEU prior to July 1967 in which they filed with the older New York City Department of Labor who had the responsibility of determining units and the election, collective bargaining. Their filing was for the office titles.

I then had to meet when I came on with John McNamara, who is the executive director who had that responsibility.

Q Were you at the agency at this time?

A Yes.

Q This was when?

A August and September of 1967. I met with him to determine which titles were still around, which titles were reclassified, and which titles were appropriate for collective bargaining.

In the original classification the Sup. HRS was a managerial position, a grade 30 unlimited. On the old career and salary plan, grade 32 carried an unlimited salary with it. The city was going forth with a managerial concept of determining one title to be the last

promotional title, and then appointments within that title to managerial positions with the salary being set, somewhat like in the Police Department like captain where that is the last promotional examination, and then the Commissioner appoints above.

With the election with the number of people in the Sup. HRS, the Department of Labor ruled that certain employees should be exempt because they were managerial.

In the notice of election the managerial employees were excluded from the election by name as being managerial, and the election went forth, came about.

The city, not wanting to have two titles both managerial and non-managerial within the same title, then created a principal HRS with grade 32 with assignments above due to duties and responsibilities, based on responsibilities.

Q At that time was the position of supervising human resources specialist classified as a generic title or classified as a specialty?

A It was classified as a generic title.

Q At this point in time, 1967, 1968, what were the duties and responsibilities of the supervising human resources specialist?

THE COURT: Are we talking about the Sup. now?

THE WITNESS: Yes.

Supervising HRS could have varied duties and responsibilities. He could supervise a unit within the human resources occupation group or could act independently, doing an independent act, independent duties and responsibilities as an individual.

The supervising HRS in CDA would be to supervise a unit in the operating divisions which would be responsible for a number of community corporations, supervising a number of community operations, or act as a principal assistant to the director of that division, or he could be in program planning and doing an independent report or independent work in the community corporation, one of the bureaus of Economic Development, Housing, Education and such.

MCDA, again either in the operation of supervisor or independently working in one of the programatic areas developing programs and such.

HRA, then Central would be in personnel, fiscal, legal, purchasing, office management, any one of the areas involved, the position -- the series, the HRA series, if you will look at the job description closely you could find many of the existing city occupational groups already present in there or their functions present in the job description

for the HRA series.

Q At the time we are talking about what was your title within the agency?

A My title was supervising HRS.

Q Did there come a time when the Civil Service Commission ordered an exam for the position of Supervising Human Resources Specialist?

A Yes.

In 1968 the Civil Service Commission came down, because of the vast number of provisionals in the occupational group, and told HRA that they were going to hold examinations --

THE COURT: When you say vast number, do you know --

THE WITNESS: The entire series was provisional; there were no permanents.

THE COURT: About how many did that involve?

THE WITNESS: In the whole series, a couple of hundred.

There were, I believe, possibly one or two permanents who -- what we call 619, from another permanent title to the HRA series. Mr. Norris in YSA reclassified to Sup. HRS title by virtue of 619. Everyone else was provisional. By civil service regulation they had to call for an examination.

The administration of the agency was a little upset because they were not as fully geared up, and they were trying every which way to protect the present incumbents in the job.

Q These present incumbents, who were they, briefly, again?

A The recruitment for the HRS series was done from the community. Every effort was made to recruit people from minority groups to work in the areas of HRA's involvement, because we wanted to show the community that we were out there to help them, the agency was there to help them, and that we were recruiting from the community; we were taking OEO's mandate from the community action program that people be hired from the community. It was the agency's policy to do as much recruitment from minority communities as possible.

Q In fact, were there many minorities who were serving as provisionals?

A Yes, they were all serving as provisionals.

Q Were you involved in the creation of the specialties, in the position of Supervising Human Resources Specialist?

A Yes, I was involved in the discussion of the specialties up to the examination point because I was an incumbent.

Q That is, you were a provisional?

A I was a provisional in there, and I would be taking the exam, so I couldn't be involved in the examination process. I got involved because there was a union involved, and my classification background from being with the union, and dealing with civil service, we were trying every which way to protect as many incumbents as possible.

THE COURT: "We" being the administration?

THE WITNESS: The administration. Mr. Ginsburg, who was then administrator, and Bernie Schiffman, who was Deputy Administrator.

In the Sup. and the principal title, which was the first exams given, because of the salary level of the jobs, we found -- we determined that there probably would be a large population taking the exam, even from outside the agency, so we try to develop the examinations so that they would be more restricted to those people who are presently employed in the agency.

THE COURT: I thought the 1968 exam turned out to be a training and experience exam?

MS. OMANSKY: Yes, that is just the point.

THE WITNESS: We tried to make it as definite as possible to fit the people who were working the agency, in the exam notice, where even credit for working in the

agency was put on.

Q Yes?

A And the Commissioners got together, and it was thought that it would be best to develop the specialties so that people who were working in each of the agencies involved would be appointed from a list appropriate to that agency, being CDA, the Community Program list; the MDT, the Manpower Development and Training, MCDA; management would be for HRA, central, and central, some administrative functions within the incumbent agencies, within the agencies.

So that the specialties were developed.

Q How did the creation of the specialties help to protect the present incumbents, the present employees?

A It created small lists. It put greater restrictions on those lists in the experience factor where people who would be on those lists would be -- CDA would be Community Development experience; MCDA would be experience in manpower; management would be the whole gamut, really, because that is the broadest of all, but then there were more jobs in management than the others, than in Community Development or Manpower.

So that the smaller the list and the larger number of incumbents on those lists would mean they would get appointed; the incidence of appointment would be greater

from those lists.

Q Do you know from the exam that was given in 1968, which was a training and experience exam, what lists were established?

A A list was established for Sup. HRA's management, community programs and manpower development and training.

THE COURT: That is management --

THE WITNESS: Community programs.

THE COURT: That is CP? Is that the code?

THE WITNESS: CP and MDT.

THE COURT: No generic?

THE WITNESS: No generic.

BY MS.OMANSKY:

Q Why was there no generic?

A The position of the agency at that time was to go to the specialties and we would not be using the generic. We committed ourselves not to use the generic. What happened was that when the list came out the programs were expanding, we still had the provisions in the generic because they had come on after the exams were given, and they are from the community, and we wanted to protect them, and the positions were only classified to the generic when an appointment was made off the list.

Q Classified to the --

A Classified to the specialty, I mean, when an appointment was made.

Q Let me get this straight now.

You say that the HRA was expanding. Now for all persons employed at HRA, was everybody employed in a specialty title?

A No. No one was employed in a specialty until he was appointed from the list to that specialty, and the position was then reclassified to that specialty.

Q What effect did that have on the agency?

A We were able to keep the provisionals in the generic title.

Q Were there clear lines of demarcation between the specialties?

A Originally there was, but with the extensive growth of HRA, we had people who were appointed permanently who some time later on were assigned different jobs, and with the growth, with the number of provisionals we had really a commingling of specialties and generic throughout the agency.

Q How soon -- when did this happen?

A Anywhere from six months after the list was promulgated. It would even be probably sometime before, because people who moved around, and they were on the list,

slbr 10 Yourman-direct

and they were appointed from the list to another agency, and they were performing outside the specialty which they were on the list for.

Q Could you give me some examples?

A Well, somebody appointed to Sup. HRA management found himself working in a manpower program, or even Sup. HRS management who was then appointed to YSA doing community action type program in YSA, and CDA, the same thing.

Q I would like to summarize at this point.

People were serving in HRA in generic titles?

A Yes.

Q Examinations were given?

A Yes.

Q And lists were established?

A Yes.

Q And people continued to serve in the generic titles unless they were appointed from a list, in which their position was reclassified, is that correct?

A Yes.

Q From the generic to the specialty?

A Yes.

Q And they were appointed from that list?

A Yes.

Q At the same time HRA was expanding its programs

and continually, I suppose, provisionals were coming in, is that correct?

A Yes, there was a continual growth in HRA.

Q And as the agency began to grow even those people appointed to specialties began to be switched from agency to agency.

Is it a fact that when people were appointed to specialties, it was normally shorthand for a particular department?

A Yes. The specialties were created for the individual departments. Community programs would be in CDA; MDT would be in MCDA and the manager would be in HRA Central, or some areas of the individual departments.

Q But then there began to be a commingling?

A Yes.

Q Individuals began to be transferred from agencies, from MCDA to Central, a community program, is that correct?

A Yes.

Q Would you describe what changes have been made in the structure of HRA?

MS. OMANSKY: I think we have this in evidence from yesterday, Defendants' Exhibit H.

THE COURT: Do you want to ask questions about Defendants' Exhibit H?

MS. OMANSKY: Yes.

BY MS. OMANSKY:

Q This Defendants' Exhibit H is entitled Reorganization Plan for the City of New York Human Resources Administration.

Could you summarize the overall changes in the agency?

A Well, the agency being now developed as a superagency --

THE COURT: Between what time and what time are we talking about?

THE WITNESS: Well, 1968 until the present; 1971, 1972, really.

THE COURT: We are certainly not talking beyond the period in which this examination was held?

THE WITNESS: No, even earlier. Even 1971, the programs were developed; the information was out back in early 1972, and we were starting on that.

Q Starting on what?

A Reorganization, total reorganization.

Q Could you give me examples?

A Well, it was decided that as a superagency it was no longer appropriate to have the old line departments that were recognized prior to the superagency; that the depart-

ments would be programmatic in nature,and dealing with the programs involved.

Q So that the in HRA Central, all administrative functions were absorbed. There was a deputy administrator for management created, and all the functions would be under that head. All the legal community affairs, public affairs, program research and evaluation research would be centralized at the top.

The existing departments, community development, youth services, manpower development, was still there.

The Agency for Child Development was created, and it took away functions from the old Department of Social Services, the operation of day care centers, both group and family day care centers; it took over the function from Community Development Agency of the Head Start Program.

The Department of Social Services was broken down into community social services, special services for adults, special services for children and the Department of Income Maintenance, dealing with the welfare clients, the Department of Social Services in that case, each one dealing in a specific area of involvement with the community.

The program was developed at Central for the departmentalizatio y program.

To deal with the community, the Human Resources

district concept was developed based upon the neighborhood government concept developed by City Hall where in a geographic area of the City there would be located what we call an HRD, where each of the departments of HRA would be represented to coordinate the programs in that geographic community.

ACD has established resource centers in ten areas geographically to deal with the day centers in that geographic area. CDA originally had the district offices dealing with the community corporations. Now community social services is going out into the community and dealing with it. Hopefully -- the program was developed for neighborhood governments, and it would be dealing with HRD; management would represent HRA on the neighborhood government; the Police Department would be represented, Fire; all the city administrations would be represented in dealing with the community and their problems.

Q I have had marked as Defendants' Exhibit K a booklet which I hand you. Would you tell me what that is?

A This is the 1972 annual report of the Human Resources Administration.

Q Would it be fair to say that that booklet also contains the information that you were just verbally giving?

A Yes. It fully describes all of the programs of all the constituent agencies of HRA, departments of HRA.

MS. OMANSKY: I would like to offer this annual report into evidence.

MR. HOWARD: No objection.

THE COURT: Received.

(Defendants' Exhibit K was received in evidence.)

xx Q Would it be important for people in HRA to know about these changes in reorganization?

A Yes.

Q Were the changes, reorganizational changes, communicated to the staff?

A Yes. The administrator, both the prior administrator and the present administrator, made it a

policy to communicate as much information to staff on the reorganization as possible.

Q Could you give some examples of how it would affect an individual's job to know about the changes? You mentioned, for example, the Human Resources district.

A One, there were more promotional opportunities created. There were more jobs created and allowed more flexibility of movement within the agency. In the establishment of ACD, for instance, people who were working in day care in old DSS moved into ACD, were reclassified by 619 from their permanent case work titles to their HRS titles.

THE COURT: Was that an improvement?

THE WITNESS: It gave them an opportunity for promotion which they didn't have in DSS because DSS was sort of frozen, there were no promotions available. It provided for more promotions in ACD, it provided for promotions for people from other aspects of the HRA to move into ACD because there were many more jobs created, people moved into ACD and received new and various assignments.

HRD itself provided for 40 HRA managers there, provided for a staff in the field for promotion from other areas and increased employment. It provided that

employees who felt that they were stagnant in one area could move into another area of the agency because in su-HRS, in any one of the HRS's, his job calls for him to be able to perform in any of the areas of HRA. All the areas of involvement are set forth in the job description dealing with human services.

Q I would like to talk about the time when the new examinations, the challenged examinations, were given.

THE COURT: Which examinations?

MS. OHANSKY: The challenged ones. The ones we are fighting about.

Q Do you know if there is any training given for these examinations?

A Yes.

Q Will you describe that training?

A I was involved in one or two meetings in house to develop the training because it was HRS's position to do whatever possible to provide continued employment for present incumbents.

We would have liked to see protection of provisionals, but the law couldn't provide that.

We reported to the union we are going to give the training to the employees of HRA in the form

of in-service training to those who were in lower titles and eligible for promotion and to those employees in HRA who were serving in that provisional title or had to take that examination to protect in the future their provisional status or their present provisional status.

Q When these examinations, the ones that are in issue here, when they were given, they were given in the generic title and not in specialty, except for the MDT specialty. Do you know why the MDT specialty was given?

A When the original series of examinations were given MCDA was not fully geared up. It was starting its new program in the regional manpower centers and the commissioner at that time wanted to protect his employees and it was agreed that the only way to do it was to farm the program out, gear it up outside the civil service structure until it was fully geared up, and then at a later date possibly bring it back into the civil service structure, so that contracts were signed with the Institute of Public Administration and the Puerto Rican Forum for them to run the regional manpower centers, which were the ten centers out in the field doing training, evaluation, placement for the community.

The employees were hired upon the recommendation of MCDA, who did the recommending of the people, the recruiting, and were hired by the Puerto Rican Forum and IPA and were put into the regional manpower system.

On December 28, 1970, when the city assumed the management, the total management of the regional manpower system, we discontinued the contract with IPA and the Puerto Rican Forum, and it was hoped we could bring the employees in under civil service without an examination. The City Civil Service Commission felt that it would not pass inspection of the State Civil Service Commission and that the employees would have to take an exam at a later date.

They would list for the generic titles then in effect for HRS and senior HRS. If we would have brought the employees back in the generic title for HRS and senior HRS they would have been liable to lose their job because there was an existing list, so the MDT specialty was created for the entire HRA series to protect all those incumbents, and separate exams would be given at a later date in the MDT specialty.

In the sup-HRS and principal HRS there already was an MDT specialty, but I believe there were few incumbents, just eight in number I believe appointed from the

original list.

Q As of your own knowledge, do you know why in 1972 an examination for the position of supervising human resources specialist was given in the generic?

A I was involved in some meetings of that discussion, and the discussion centered around the growth of the agency and the flexibility needed and the commingling of the present positions and commingling of functions, that with the new operation at HRA, Community Development or Manpower, except for those few people coming in, was spread out throughout the agency and management.

THE COURT: You wanted to have a list which would enable you to move people around?

THE WITNESS: Yes. Also because the functions couldn't be defined any more. The only one you could define was Manpower, but then even in HCDA there is management. Community Development involved dealing with the community. The job itself included all that, because in one area of the agency a person could be doing both. Even HCDA the regional manager --

THE COURT: To the extent they were doing it already you didn't need to have a new list, did you?

THE WITNESS: The other lists were already

gone. We were calling for a new examination because there were a tremendous amount of provisionals.

MS. OMANSKY: I am glad you mentioned that.

I would like to have this marked for identification.

(Defendants' Exhibit L marked for identification.)

BY MS. OMANSKY:

Q What is that?

A This is a list prepared 12/30/1973 of provisionals in the title of sup-HRS; sup-HRS (management), sup-HRS (audit) and sup-HRS (MDT), a provisional report.

Q What's the title of the column on the left-hand side, the furthermost left-hand column?

A That is the title date, the date the employee entered into the title.

Q The title of what?

A Sup-HRS.

Q The generic?

A Yes.

Q And this is the latest provisional run, is that what this is called?

A Yes, provisional report.

THE COURT: In other words, the first person

on this list took the job in 1968, is that right?

THE WITNESS: In the title of sup-HRS in 1068, yes.

Q Do you know whether the names of the plaintiffs appear on this list?

A Yes.

THE COURT: I see Mr. Jones is checked.

MS. OHANSKY: Yes, we checked them, as a matter of fact.

THE COURT: 5/10/71.

Q So there are four pages of persons appointed provisionally to the generic, is that correct?

A Yes.

Q And at the bottom it says as of December 30, 1973 there were 181 provisionals serving in the generic title?

A Correct.

Q And for the specialty title of management, how many were there serving?

A One. Management, one --

THE COURT: Where do you get that from?

THE WITNESS: That's the next page.

THE COURT: All right.

A And audit, one, and in MDT, 17.

Q Mr. Yourman, based on your experience in the agency and as a supervising human resources specialist, are you familiar with the position of supervising human resources specialist?

A Yes.

THE COURT: Generic you are talking about, right?

Q Are you just familiar with the generic position?

A No.

THE COURT: I wanted to know what you were asking about, both or one.

MS. OHANSKY: Actually, we say the position is basically one position.

THE COURT: All right.

Q Have you had an opportunity to review the promotional and open competitive exams that were given for the position?

A Yes.

Q Based on your experience and your knowledge of your job, what is your opinion of the examinations?

A The content of the examination which delves into the agency, HRA, covers the full spectrum of HRA and asks questions regarding any area in which a sup-HRS

can be employed.

THE COURT: I am sorry. Any what?

THE WITNESS: Any area in which a supervising HRS could be employed.

Q Would you say that the examinations were related to the position?

A Yes.

MS. OMANSKY: No further questions.

CROSS EXAMINATION

BY MR. HOWARD:

Q Mr. Yourman, you testified that you are a co-adjunct instructor at several schools. What is a co-adjunct instructor?

A It is an instructor on a part-time basis teaching specialist courses. My field of endeavor is public sector labor relations.

Q Do you teach or have had any experience in teaching courses in the area of human services?

A No.

Q Is it your testimony that the functions of the Human Resources Administration involve human services?

A Yes.

Q You also testified that when you came to the

agency that your title was a provisional supervising HRS?

A Yes.

Q You no longer hold that title?

A No.

Q Did you become a permanent supervising HRS at any time?

A No, I became a permanent principal human resources specialist (management).

Q How did that come about?

A Through the examination?

Q Which examination?

A The principal human resources specialist (management), which was given in 1968.

Q Was that a written examination?

A It was T & E oral.

THE COURT: Training and experience?

THE WITNESS: Yes.

Q Have you ever taken any written examination in connection with your titles as a provisional supervising HRS and as a principal HRS?

A No.

Q You testified in some detail about classification of positions.

THE COURT: Excuse me, Mr. Howard, something occurred to me I should ask this witness about.

How is the decision made, if you know, about whether an examination is to be a written examination or an examination based on training and experience?

THE WITNESS: I really couldn't answer. It's up to the Civil Service.

THE COURT: Do you know why the exams in 1972 weren't based on training and experience instead of written exams?

THE WITNESS: Not from my own direct knowledge. The decision was made -- I was not involved in the decision. I have some conjecture about it, knowing the number of people involved.

THE COURT: I guess we should ask the people who know rather than ask you to conjecture.

BY MR. HOWARD:

Q Do you know whether there is any departmental regulation or any collective bargaining agreement or any law that precludes the giving of a training and experience examination?

THE COURT: Are you talking about departmental in the HRA?

MR. HOWARD: Yes.

A That is a decision of the Civil Service Commission.

Q Do you know of your own knowledge whether there is any regulation that would preclude what I have suggested?

A No.

Q You testified in some detail about classifications in connection with the specialties, is that correct?

A Yes.

Q Would you explain again what is involved in the classification, and what you have to do in that regard?

A Well, the position, the individual position or group of positions, are audited, desk audited, looked at. The employee or sampling of employees would be questioned as to what they do. The information would be put together. A job description would be developed based upon the work being performed, the salary level, experience, education, and a class specification would be developed which would include many varied jobs at that level of employment.

Q Would you say that it is your function in that regard essentially to arrive at a classification that

relates to the salary paid to an employee?

A No. It wasn't my function, but it doesn't necessarily regard the salary paid to that employee. That is only one of the factors.

Q When you testified that the supervising position was a managerial position at grade 30, what doyou mean by that?

A Prior to the present collective bargaining stance of the city, in 1954 the Board of Estimate passed a resolution establishing the career and salary plan which was a scientific classification of all the positions in the city and establishing a salary schedule from grade 1 through 32. They provided from that all positions had to be desk audited or sampling of desk audits, the positions had to be classified in generic titles, or, well, class specifications, the individual employees would have an opportunity to appeal to the Classification Appeals Board as to what title they were classified to, and this process didn't end until 1963 or '64, and grade 32 in the current salary structure was unlimited starting at $13,100.

Q What did you mean with respect to managerial position a grade 30?

A I am trying to get to that. The city

was developing a managerial structure where an employee would take an examination to a title in the structure and then would be able to receive salary increases based upon the job he was performing at different levels.

The original Civil Service Commission resolution only created the supervising HRS, and that was at grade 30, and there could be managerial status within that title. Not everyone would receive a higher salary. Some would start at $12,100 and just receive increments or collective bargaining increases when and if it was negotiated. Others could be assigned to higher positions and then receive salaries commensurate with that position that they were holding.

With the union filing and with the Department of Labor decision that some of them -- that not the entire position was managerial quality -- not quality but status -- another title was created for the managerial in grade 32, and the city --

Q Let me ask you this, Mr. Yourman. Does the word "managerial" within the context that you are testifying about have any relationship at all to the parenthetical classification?

A No. It has no relation to the parenthetical.

THE COURT: As I understand, managerial has

to deal with the level of authority you exercise, and parenthetical has to do with the specialty that you deal in.

THE WITNESS: Yes.

THE COURT: And there is a specialty named management, but it doesn't mean you are necessarily a manager.

THE WITNESS: It deals with the management function.

THE COURT: Right.

BY MR. HOWARD:

Q With respect to the specialty of management, were you involved in any way in the development of that specialty of that classification?

A No, because I was going to take an exam for that specialty, and the development was done at the Civil Service, Department of Personnel, with our personnel people.

Q Were you involved as a part of your duties with the creation of the other specialties or parentheticals in the community programs and manpower development programs?

A These specialties were developed during the discussion of the exam and how to protect the employees best. I was not --

Q The question was whether you were involved in any way as a part of your work duties?

A No.

Q Were you involved as a part of your work in parentheticals later, auditing and public affairs?

A In discussions.

Q Discussions with whom?

A I should clarify it. I wasn't actually involved in the establishment of the parentheticals. I was involved in discussions to develop agency position to deal with the Civil Service Commission, Department of Personnel. Not so much in the actual final decision-making, but in the discussions of how to develop positions to deal with the Civil Service Commission, Department of Personnel.

The same thing on audit and public affairs. Because we had people in those titles, and some were in danger of being bumped because of lists, some lists that came out, and we were looking to protect them.

Q Was your involvement to the extent of labor and industrial relations problems and changes in positions and that kind of thing?

A Prior to the merger of HRA personnel with DSS, because of my background in classification and

civil service I was called upon to attend meetings and give advice and to deal with it.

Q Advice within what parameters?

A In the personnel field, in classification -- from my knowledge of civil service in the classification.

Q You weren't called upon to give advice as to the substantive work that would fall under the parentheticals, were you? Do you follow what I am saying?

THE COURT: Are you asking this witness was it his assignment to decide what the classification should be after somebody else decided what the work would be in that area?

MR. HOWARD: Essentially.

THE COURT: You didn't decide there should be such-and-such a division of HRA?

THE WITNESS: No.

THE COURT: You decided if there was such a division or such a division of labor, then the classification of people working in that would be such-and-such, is that right?

THE WITNESS: Yes.

BY MR. HOWARD:

Q And I wanted to know if you had any involvement or responsibility for determining the specific work

to be done under the parenthtical?

A The specialties were created specifically for the individual departments and those people in those departments.

Q That is not my question. I am asking what your involvement was.

A In the discussion regarding the creation and the developing of positions to deal with the Department of Personnel.

Q Would it be correct to say that you had no involvement or no responsibility for determining substantively the work of any particular classification or any particular parenthetical?

A No, I was involved in discussion of what would be included.

Q Tell me the nature of your input into these discussions?

A My input was from my dealing with the departments and dealing with the areas that I was involved with. In the discussions we discussed what kind of work was being performed in each one of those departments, and their inclusion, and it was finally developed that the individual specialties, like community programs, would include all those positions in CDA, the manpower would

be for MDT -- MDT would be for the MCDA, management for HRA central, and we included all the management functions in it. There was also discussion involved in what position do we take with Civil Service when the Department of Personnel comes to us and says, "Why don't we use the normal civil service titles that are presently structured?" Because if you look at the job they are included like budget, personnel, administrative services, a whole gamut. At one time the HRS occupationa group had eight occupational groups that could fall within that, whose jobs could be pulled out of it.

Q Let's move to another subject.

You testified, Mr. Yourman, that there was intensive recruitment at the time that the supervising position was created and the HRS series was created, is that correct?

A Yes.

Q Do you recall when this recruitment took place?

A Continually. Not only once.

Q When did it begin?

A It began with the formation of the Economic Opportunity Committee, prior to my coming into HRA.

Q In what year?

A 1965, 1966.

Q When you came to HRA in August of 1968 --

A '67.

Q -- do you know how many people were then employed in the position of supervising HRS?

A I couldn't give you a figure now. I couldn't remember. I can give you an approximate figure.

Q Approximately would do.

A Fifty.

THE COURT: Provisionals?

THE WITNESS: All provisionals. There were no permanents.

Q Moving ahead for a moment to October of 1972, did you know how many people were employed in the position as a provisional supervising HRS, say, in October of 1972?

A No.

Q Do you have any opinion, again, or can you give me any approximation?

A Close to 200.

THE COURT: We know there are 181-plus in December.

A Excuse me, I would like to change that figure.

THE COURT: The 1967 figure?

THE WITNESS: Yes, because in my discussion with John McNamara we had 30 deleted. There were almost 75 to 80 people in the sup-HRS title. I am just recollecting that discussion.

BY MR. HOWARD:

Q Mr. Yourman, referring to Defendants' Exhibit L, which is a summary of the number of people in the provisional title, do you have a copy of that exhibit, sir?

A No.

Q I note, in just having glanced at it, that you do list a total of 181 people in the provisional title as of December 30, 1973, but I note further that -- and if you will turn to the third page of your report -- that about one-fourth of the way down you will see that your title date moves to October of 1972 and November and successively into 1973 for the balance of that page and over into the next page, and without having the opportunity to do any quick calculation here would you say that at least half or a third of the number who you list on this exhibit became provisionals after the time that the examination was given?

A There are approximately --

Q There are 181 as a total.

A Approximately 40-some-odd are on each page.

THE COURT: It looks like about a third then.

THE WITNESS: Let's less than a third.

Q Do you know when a determination was made to give an examination for this title? I think you testified to that before.

A It was in 1972.

Q Do you recall when in 1972?

A No.

Q Would it have been the early part of '72?

A Yes.

Q In January of February of 1972?

A Possibly.

Q Would you look back at the list again. If you note beginning with page 2 that your title date at that point is January of 1972.

A Yes.

Q And following the same estimate of 40 per page, would it be correct to say that perhaps based upon this sheet there may have been 40 or 50 people in the provisional title at the time there was a determination to give an examination?

A Well --

Q Following the Exhibit L which you have produced?

A The number of provisionals changes, people being promoted who were there before being moved up to principal HRS, people being -- the whole ACD group coming in and new promotion opportunities being created. If you look at the column "Distribution point of interpretation." --

THE COURT: Let me interrupt. I am not quite sure, Mr. Howard, what you consider to be the significance of these dates but if there is any significance to them it seems you ought to get the figures as of the time you are interested in establishing. Something as of December 30, 1973, may be quite inaccurate as to what was the actual state of affairs in October of 1972 or January of 1972. We can see on this list a certain number of people have come in since then who are still there, but we can't see how many people might have been there in January of 1972, for example, who are no longer there.

MR. HOWARD: Yes, your Honor.

BY MR. HOWARD:

Q Again, Mr. Yourman, based upon your -- incidentally, did you prepare this report?

A No, it was prepared by HRA budget, personnel.

THE COURT: May I ask both sides what they consider to be the significance of the numbers of people on the list?

MR. HOWARD: The document has been produced by the defendant. There has been testimony that because of the fact that there were a substantial number of provisionals in the title in question it was decided an examination should be given.

First, I want to establish, or I have some questions with respect to how many provisionals the defendant is talking about, in terms of whether there were 200, 300, or whether it is a matter of 30 or 40 people.

Two, I have already asked if there was a need to give an examination as to why it needed to be a written examination.

THE COURT: I have inquired into that, too.

Let's return to this subject after a recess. We will take a recess at this time.

(Recess.)

BY MR. HOWARD:

Q Incidentally, Mr. Yourman, you have testified that you yourself held the title of provisional super-

vising HRS at one time?

A Yes.

Q Would you tell us generally what you did in that position?

A I was responsible for labor relations for HRA, both for the employees within HRA itself and for the areas in which we funded, basically the Council Against Poverty --

THE COURT: As you indicated in your earlier testimony.

THE WITNESS: Yes.

Q Did your job involve your having to do anything with respect to the problems of the elderly in the city?

A No.

Q With respect to the problems of those who were receiving welfare and assistance?

A No.

Q With respect to the problems of poor children?

A No.

Q With respect to day care centers?

A Involvement in day care. I was called in on the day care negotiations.

Q Labor negotiations?

A Yes.

THE COURT: But you didn't have anything to do with management at day care centers?

THE WITNESS: No.

Q Did you have anything to do with the Head Start program?

A Yes.

Q What was your involvement there?

A It being under the Council Against Poverty I was involved in discussions regarding funding, collective bargaining, programs, recruitment and classification in the Head Start program.

Q Do you know what the Head Start program is about?

A Yes.

Q What is it about?

A To take disadvantaged children, provide them some form of preschool training in preschool settings in the communities.

Q Is that one of the programs within one of the agencies of HPA?

A Yes. It was in CDA. It is now in ACD.

Q Did you have anything to do with the preparation of curricula materials and educational materials

for the Head Start program?

A No.

Q If you know, would any human resources specialist in whatever title, whether senior HRS or supervising HRS, have some involvement in the preparation of educational materials for the Head Start program?

A Yes.

Q How many different programs are there, Mr. Yourman, within HRA?

A There are many varied numbers of programs in which HRS occupational people are involved?

Q Can you give us an idea of how many?

A I couldn't give you a definite figure. Twenty or more.

Q Twenty or more?

A Twenty or more. Different kinds of programs in which an HRS could be involved.

Q Does that include labor?

A Yes.

THE COURT: Or sup too, I take it?

THE WITNESS: I am talking about the educational group.

THE COURT: I was asking counsel during the recess whether there is in any of the sectors of HRA

a group of people all of whom really do do the same thing or whether this is just such an unusual animal that you really can't find any cluster.

THE WITNESS: There are clusters, but they are very small clusters.

THE COURT: That is what I mean.

THE WITNESS: The deputies to the district offices in CDA would be seven or eight. The deputy managers in MCDA, these are MDTs. But then you have people in budget, fiscal, personnel, each doing their own job in those areas which are sup-HRSs. There are sup-HRSs in every one of the programs.

If you look at the provisional report in the last column, distribution point at interpretation, these are the areas where they are involved. It is listed. And they can be doing numerous kinds of jobs, like there is a grouping CDA-Head Start. Each one of these can be doing a different job. ACD. All of them could be doing a different job. You have personnel, internal audit, training --

THE COURT: Let's take an example. Do you know anything about the operations -- you are not a lawyer, are you?

THE WITNESS: No.

THE COURT: You must have had a lot of contact with lawyers, unhappily?

THE WITNESS: Sometimes happily.

THE COURT: You know there are a lot of different specialties within the law; real estate, domestic relations, taxes, contract, labor relations, to name the less interesting aspects of law. Would you consider it a reasonable comparison to compare this occupational group with an occupational group like a very large law office such as the Corporation Counsel's office or would you say it was even more disparate? Is there any other group that you know that compares in peculiarity or makeup with the HRS job group?

THE WITNESS: You can compare it with the law. If you compare the item of law with the item of human services as they are and are developing --

THE COURT: That is what I am talking about.

THE WITNESS: If you take the aspects of human services compared to law you have a comparison.

THE COURT: In the Health Services Administration, which is another superagency -- do you know anything about the jobs there?

THE WITNESS: Yes.

THE COURT: Is there the same sense of

disparateness there?

THE WITNESS: No. Because you have to realize HSA took existing departments and they are not involved in programs, they are doing the implementation of programs and not the developing of programs. HRA --

THE COURT: More concrete, you mean?

THE WITNESS: Yes. Take the Department of Health, the public health sanitarians, they are doing public health sanitation work. The dental assistants, the dental technicians, dental hygienists, the inspectors.

THE COURT: I understand that level, but how about the upper levels?

THE WITNESS: They were there before and use the normal civil service titles; methods, budget, personnel, accounting, law, and such.

HRA started new. The three departments which constitute the basis for HRA--

THE COURT: Does this kind of fluidity always exist in an organization just because it is new or is it the subject matter also?

THE WITNESS: We started new and were able to maintain that flexibility. If HRA was an on-going agency -- let's say if DSS did not have the rigidity

because of state regulation, and at the intial onset of HRA DSS would have been part of HRA so HRA would be merged into the DSS functions and we wouldn't have the HRS series today, it is my opinion we would have the normal civil service structure, because the HRA fiscal personnel, administrative functions, would have expanded to include HRA.

THE COURT: If that had happened would you have had separate exams for each of the specialties?

THE WITNESS: We would not have had an exam.

THE COURT: Not even if you had a lot of provisionals because you suddenly expand a lot?

THE WITNESS: Because the titles would be there, there would be no HRS and there would be no community people involved. The people from the community would only have been able to gain entrance at the entry level and would not have qualified because many of the examinations call for a college diploma, and many of the people working in HRA came in with or without a high school diploma and gained entrance to the series.

THE COURT: That is interesting and admirable but it doesn't answer what I have in mind.

THE WITNESS: This is one of the reasons the

HRS series was created, so that people from the community without the college diplomas could gain entry into the service and serve the community that had to be served.

BY MR. HOWARD:

Q Mr. Yourman, were you consulted at all in connection with the preparation of a field audit or job audit relating to the examinations in issue here?

A No.

Q Were you consulted in connection with the preparation of the examination items, the test items, on the two examinations in issue here?

A No. The first one I couldn't, I was an incumbent. I was elgible to take the examination and couldn't be.

Q Were you eligible to take the examinations in October of 1972?

A No, I was not.

THE COURT: Your conclusions about the exams are based on having read them after they were complete and in connection with this litigation?

THE WITNESS: Yes.

Q When for the first time did you see the -- incidentally, did you read both examinations?

A Yes.

Q Do you recall the numbers of the examinations?

A No. I have them here. The numbers are 1631, I believe, and -- I don't know.

Q Do you recall the title of each examination?

A One was for the promotion to sup-HRS, the other was an open competitive examination for sup-HRS and sup-HRS (MDT).

Q When did you first see those examinations?

A Tuesday of this week.

Q The day before yesterday?

A Yes.

THE COURT: Did you take the exam?

THE WITNESS: No. I didn't have to.

THE COURT: I was just wondering if you administered it to yourself.

THE WITNESS: No, I just went over it for relevance.

Q Do you recall any of the questions on the open competitive examination now, today, this minute?

A Basically, except for the last couple of questions both of the exams were the same.

Q Do you recall how many questions there were on the open?

A Eighty.

Q Do you recall any of those questions?

MS. OMANSKY: I don't understand the purpose.

THE COURT: The purpose is to find out how good his opinion is.

MS. OMANSKY: He is not asking his opinion, he is asking his recollection of the substance of the exams.

THE COURT: The value of his opinion depends on how much knowledge he indicates he has of the exam. Overruled.

A There are questions in the exam on supervision.

Q Can you tell me one specific question?

A There is a question dealing with the HR -- with the human resources district, I believe, dealing with which ones were created. There is a question on the Social Security Act.

Q What is the question on the Social Security Act?

A What changes did it make, I believe, with eligibility for day care.

THE COURT: I want to make it clear that I don't mean to say that a man's opinion with regard

to something is utterly worthless if he doesn't happen to remember the underlying material, but it is relevant at least.

THE WITNESS: I didn't memorize the examination. I went through and went over it.

MS. OMANSKY: Mr. Howard himself, who was working on it for a long period, had to refer to the examination.

THE COURT: Did you want to cross examine Mr. Howard.

BY MR. HOWARD:

Q You saw the examination first two days ago?

A Yes.

Q And you can't remember it, following your testimony?

A I didn't think I would be called upon to memorize the entire exam.

THE COURT: How long did you examine the examination?

THE WITNESS: About an hour. I went over the questions to seewhat questions were related to what areas of employment in HRA.

THE COURT: How did you decide whether a question was or wasn't related, only by personal experience

or did you consult with anybody?

THE WITNESS: From my experience and knowing the areas of involvement of HRA, the varying programs, and my understanding and knowledge about the programs. I can't list them from memory, but these are programs within HRA, one of the areas of HRA.

THE COURT: Do you remember a question on the exam having to do with the halo effect?

THE WITNESS: Yes.

THE COURT: What did you think of that question?

THE WITNESS: That was a supervisory question. That was a question on supervision.

THE COURT: Right.

THE WITNESS: Well, it's a determination of myselfon that question. I would answer that question by elimination, you know, going through the exam by elimination.

THE COURT: Do you think it is relevant to the job of sup?

THE WITNESS: It is relevant to that level of supervision.

t4/1 am

THE COURT: Can you estimate for me what percentage of people in the title Sup. actually do supervision? I know you said that they don't all.

THE WITNESS: They don't all.

Offhand I would estimate 60, 65 per cent.

THE COURT: I see.

THE WITNESS: Also, if you remember, Judge, on an examination at this level, also if a person is appointed, he would probably go to his supervisory level at the next level. There are open competitive exams, and there is promotion from that to another title, and above, which may carry more supervision.

BY MR. HOWARD:

Q Incidentally, Mr. Yourman, I believe your testimony was that in planning for the examinations here that you were concerned about protecting the incumbents?

A The agency was.

Q Were you concerned as a member of the agency?

A Yes, very much concerned.

Q Why were you concerned?

A Why was I concerned? Because we took people from the community, we hired people from the community. We made a commitment -- Mr. Ginsburg, who was administrator back in 1968 made a commitment; we had a big meeting out

at the Chamber of Commerce; every effort was made to protect the employees when we gave the first examination. I had some disagreement with administration; why weren't exams continually given once the initial list was used; why we keep hiring provisionals; why weren't the exams given continually; and, you know, decisions were made t'

I myself was concerned because I knew the people; I worked with them, and the MDT question I was particularly involved with from my own thing --

Q Well, did you think that the work of the provisional people whom you knew was satisfactory?

A Yes, in any job that they were doing.

Q And you were concerned with having them keep those jobs?

A Let's put it this way: To keep those jobs, but also to be flexible enough to move in the expanding area of HRA.

Q But you didn't think these people were incompetent to perform their jobs?

A In the job that they were then performing, let's put it that way.

THE COURT: Well, I suppose you would not, as a matter of policy, want to keep on large numbers of

provisionals who might have been doing a good job in the job they were doing but who might not be able to do something else that they were called upon to do?

THE WITNESS: The thing is in the title generic they have to be called upon to do many jobs. Like, who knows, with the new administration, Labor Relations could be put in another area of HRA, and I could be called upon to perform a completely different function than I am now performing. My appointment can change.

Q Mr. Yourman, in October of 1972, do you know how many people there were holding the permanent title of Supervising Human Resources Specialist?

A I don't have those figures.

Q I beg your pardon?

A I don't have those figures, I wouldn't know. It really didn't concern me.

Q Do you know whether those persons who held the permanent title were required to take the examinations or the kind of examination in issue here?

A They took a training and experience exam in 1968 the same as I took.

Q Which, again, had limitations with respect to parenthetical designations?

A They took basically the examination. The assign-

ment was made, as I understand it, based on where they were working, where their field of interest was.

Q Those permanent people, based on your knowledge of the operation of the agency, did they also qualify to shift from one division to another, CDA to YSA?

A They did.

Q They could do that?

A They did.

Q They were not, however, required to take any kind of so-called generic examination?

A Once you receive permanent status at that level a person could be either given a leave of absence from one title to another comparable title or be 619.

Q 619?

A 619 means -- I think it was explained yesterday by Mr. Rosenberg --

THE COURT: It is a lateral shift.

THE WITNESS: A lateral shift with qualifications, experience, comparable, and salary is comparable. Lateral shift. We move people around.

Sometimes because of budgetary restrictions we put them on leave of absence or from a specialty to another specialty or to the generic.

Q Now, Mr. Yourman, was it your testimony that upon

reviewing the two examinations that you felt they were related to the agency; is that what you said?

A They were related to HRA as a whole.

Q In what respect?

A Taking off the supervisory questions which I am reallynot going to discuss, the other questions asked were programmatic, dealt with programs within HRA.

Q Were the questions on these examinations related to your duties when you were provisional supervising human resources specialist, and, if so, in what degree?

A If I was being examined, there was nothing specific on labor relations, but I would be responsible in my areas to know about other areas in the agency. In labor relations I would be responsible for dealing with the unions and dealing with the employees in those areas.

Q So you would need to know about the labor problems?

A I would have to know about the program problems.

Q But in your duties would you have need to know anything about the curriculum materials in the Head Start program in order to discharge your duties as a provisional supervising human resources specialist?

A Except I could receive an assignment when I leave this building to go into Head Start.

THE COURT: That is the point. Would you at this

point need to know that or would you simply need to be adaptable so you could learn it tomorrow if you have to?

THE WITNESS: Not at this point, no.

MR. HOWARD: One second, your Honor.

MS. OMANSKY: I would like to offer in evidence --

THE COURT: I don't think Mr. Howard is through.

MS. OMANSKY: I'm sorry.

MR.HOWARD: I have no further questions.

THE COURT: You want to offer Exhibit L, Ms. Omansky?

MS. OMANSKY: Yes.

MR.HOWARD: No objection.

THE COURT: All right, received without objection.

(Defendants' Exhibit L for identification was received in evidence.)

THE COURT: Do you want to ask any more questions or do you want to leave well enough alone?

MS. OMANSKY: No more questions.

THE COURT: I didn't mean to press you.

Thank you, Mr. Yourman.

(Witness excused.)

MS. OMANSKY: Defendants call Dr. Mildred Katzell.

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